

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CRIMINAL REVISION NO. 6 OF 2017

PIUS KIMEU NDOLO.....APPLICANT

VERSUS

DIRECTOR OF PUBLIC PROSECUTIONS.....RESPONDENT

RULING

1. This file was forwarded to me to deal with an application for revision brought under Section 362 and 364 of the Criminal Procedure Code.
2. The applicant was convicted on his own plea of guilty on the offence of stealing contrary to Section 268 (1) of the Penal Code as read with Section 275 of the same Code. He was sentenced to serve three (3) years imprisonment.
3. In his application for revision filed on 9/02/2017, he seeks for revision of the sentence to a suspended sentence. He states that he is married with a wife and children who depend on him and that he is traumatized by the life in prison. The longer the period he stays in prison, he says, the more his life will be jeopardized.
4. Section 362 of the Criminal Procedure Code provides as follows:-

The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.
5. The applicant was sentenced on 26/08/2015. He has now served about half of the three (3) years imprisonment. The value of the property stolen was Kshs.614,000/= namely 1500 bags of cement.
6. In mitigation, the applicant said he had high blood pressure but did not provide any supporting medical documents. The magistrate in passing sentence said he had considered the mitigation.
7. Section 362 deals with cases where the magistrate has committed an irregularity, illegality or propriety in any finding, sentence or order. If the high court satisfies itself of such incorrectness, irregularity, illegality or impropriety, it may interfere with the finding, order, or sentence.
8. In this application, the applicant has not shown that the magistrate acted contrary to the law in passing the sentence. He has not faulted the trial magistrate in any way and his plea for review of sentence is based on his own personal and family issues.
9. The revisionary powers of the High Court under Section 362 are aimed at correcting an illegality, irregularity or impropriety of a finding, sentence or order of the subordinate court.
10. I find that the learned magistrate considered the mitigation and all other factors including the value of the property.
11. It is my finding that this application does not fall under the precincts of Section 362. It has no merit and it is dismissed accordingly. The sentence imposed remains undisturbed.

12. It is hereby so ordered.

DATED AND SIGNED AT EMBU THIS 11TH DAY OF APRIL 2017.

F. MUCHEMI

JUDGE