

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KIAMBU

CRIM. REVISION NO. 18 OF 2017

JAMES WATETE KAHUNYA..... APPLICANT

VERSUS

REPUBLIC PROSECUTOR

(Arising from Sentencing Order dated 16th 5July, 2015 in Kiambu Chief Magistrate's Criminal Case No. 1658 of 2015 presided over by Hon. J. Kituku, Principal Magistrate)

RULING ON REVISION

1. The Applicant was arraigned before the Kiambu Chief Magistrates' Court on 16/07/2015 charged with a single count of being in possession of narcotic drugs contrary to Section 3(1) as read together with Section 3(2)(a) of the Narcotic Drugs and Psychotropic Substances Control Act No. 4 of 1994. The particulars of this charge were that on the 16th day of July, 2015, at Kawaida village within Kiambu County, the Applicant was found in possession of one hundred and thirty (130) stones of cannabis which was not in its medicinal preparation form.

2. The Applicant pleaded guilty to the charge at his first arraignment and the Learned Trial Magistrate imposed a sentence of three years imprisonment after duly considering his mitigation.

3. In this application for review of his sentence, the Applicant feels that the imprisonment for three years was excessive given the mitigating circumstances. He says he was a first offender and that he expressed genuine remorse for the offence. He also says that he is now fully reformed and has been trained in prison. He is ready to begin a drug-free and crime-free life outside prison. Finally, he pleads for mercy from the Court because he has a young family which is fully dependent on him.

4. Ms. Ngalukya for the Prosecution opposed the application for review. She argued that the sentence was proportionate in the circumstances. She argued that the record showed that the Applicant was not merely using but was dealing with bhang. He was caught with a fairly large amount and in admitting the facts of the case, he confirmed that he was selling them. Considering the quantity involved, Ms. Ngalukya felt that the sentence was fair and should not be interfered with.

5. The circumstances upon which a reviewing court will interfere with a sentence lawfully imposed by a trial Court are circumscribed. It will only do so if it is evident that the trial Court acted on wrong principles or overlooked some material factor or the sentence is illegal or is manifestly excessive or lenient as to amount to a miscarriage of justice. Lastly, a reviewing Court can interfere with sentence a Trial Court has imposed a sentence that is demonstrably unfit in the given circumstances. It is not enough that the reviewing Court would have imposed a different sentence if it was sentencing in the first place.

See: *Ogalo s/o Owora vs. R [1954] 24 EACA 70.*

6. In this case, it cannot be said that the Learned Trial Magistrate addressed herself to all relevant factors and it cannot be said that she acted on any wrong principles. The Learned Magistrate explicitly considered that the Applicant was a first offender and that the Applicant was remorseful. He found that imprisonment for three years was an appropriate sentence in the circumstances.

7. Given the amounts involved and the fact that the maximum sentence for dealing with bhang is twenty years, I am unable to say that the sentence was in any way disproportionate or excessively harsh. It is also

clear that the Learned Magistrate took into consideration all the factors before sentencing and did not consider any extraneous factors.

8. Consequently, I find no reason to review the sentence. The Application for revision is hereby declined. The sentence is affirmed and the Applicant shall serve the remaining part of his sentence.

9. Orders accordingly.

Dated and delivered at Kiambu this 22nd day of June, 2017.

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JOEL NGUGI

JUDGE