



REPUBLIC OF KENYA

IN THE HIGH COURT

AT EMBU

CRIMINAL REVISION NO. 2 OF 2017

SAMSON NDUNGU.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. This is an application for revision brought under Section 362 and 364 of the Criminal Procedure Code it seeks for review of the sentence of Hon. M.N. Gicheru, Chief Magistrate Embu. The applicant was charged and convicted of the offence of robbery contrary to Section 296(1) of the Penal Code and was sentenced to three years imprisonment.

2. The applicant states that he is satisfied with the conviction but prays for a revision of the sentence. He states that he is a first offender and that he has been incarcerated during his trial. It is his plea for the time he has been in prison he has reformed due to the harsh conditions of prison life. He is the sole bread winner in the family and he has already served 1/3 of his sentence. He further states he has an asthmatic condition which has been made worse by the conditions in prison. He pleads for a non-custodial sentence.

3. The respondent opposed the application arguing that the applicant was given a lenient sentence for a capital offence. He does not fault the court for any mistake, illegality or impropriety in passing sentence and the court has no grounds to interfere with the sentence. He has not annexed any medical record to show that he suffers from asthma. That notwithstanding there is adequate medical facilities in prison to treat his condition.

4. The purpose of Section 362 is to correct any illegality or impropriety of any finding, sentence or order recorded or passed, and as to the irregularity of any proceedings of a subordinate court.

5. Section 362 provides:

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.

6. It was held in the case of **Republic Vs Kiritta KLR [2008] 614** that under Section 362 of the Criminal Procedure Code, the court can only interfere with the sentence imposed by the trial court if the same is illegal or improper.

7. An offence under Section 296 (1) carries a sentence of 14 years imprisonment. The sentence of three years meted by the learned magistrate was within the law. I agree with the state counsel that the sentence was very lenient.

8. The applicant does not accuse the magistrate of an illegality, impropriety or mistake in passing sentence. The facts and the circumstances of this application do not fall under Section 362 of the Criminal Procedure Code.

9. It is my considered opinion that the trial court did not commit any illegality or impropriety in its finding, in passing the sentence or order.

10. I find no merit in this application and dismiss it accordingly.

DELIVERED, DATED AND SIGNED AT EMBU THIS 22ND DAY OF NOVEMBER, 2017.

F. MUCHEMI

JUDGE

In the presence of:-

Applicant present in person

Ms. Nandwa for respondent