

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO.41 OF 2017

SHEHLA SULTANA APPLICANT

VERSUS

REPUBLIC RESPONDENT

RULING

The Applicant, Shehla Sultana was convicted of **trafficking narcotics drugs** contrary to **Section 4(a)** of the **Narcotic Drugs and Psychotropic Substances (Control) Act**. The Applicant was found in possession of 11.054 kilograms of heroin at Jomo Kenyatta International Airport on 28th January 2010. She was sentenced to serve 15 years imprisonment, and further, pay a fine of Kshs.33,162,000/-. The Applicant was sentenced on 10th February 2011. The Applicant has applied to this court seeking to have a revision of sentence. She states that she is old and sickly. She is contrite and remorseful for the offence that she committed. She told the court that she was experiencing hardship in life when she was persuaded to engage in drug trafficking. She pleaded with the court to exercise leniency on her and revise her sentence. Ms. Aluda for the State was not opposed to the application. She submitted that the court should exercise its discretion and commute the sentence of the Applicant to the period served.

This court has carefully considered the facts of this case. When the Applicant was sentenced by the trial court, that court was exercising judicial discretion. This court can only interfere with such sentence if it is established that the sentence was either harsh or extremely lenient as to constitute miscarriage of justice. This court can also interfere with the exercise of such sentencing discretion if it is established that the trial court applied the wrong principles of the law in sentencing the Applicant.

In the present application, it was clear to the court that the trial court sentenced the Applicant to serve a legal sentence. This court has taken note of the age of the Applicant. It has also considered her mitigating circumstances. It was apparent to this court that such mitigation does not distract from the fact that the charge that the Applicant faced and was convicted of was serious. Even if this court were to take into account the period that the Applicant was in remand custody during trial, the Applicant is yet to serve two thirds of her sentence to entitle her to benefit from remission. The Applicant's circumstances notwithstanding, if this court were to revise her custodial sentence, it would set a bad precedent especially in light of the charge that the Applicant was convicted of.

In the premises therefore, this court is of the view that the application for revision of sentence made by the Applicant is premature. The Applicant shall continue serving the sentence until the time when she shall benefit from remission. The Application is hereby dismissed. It is so ordered.

DATED AT NAIROBI THIS 14TH DAY OF DECEMBER 2017

L. KIMARU

JUDGE