



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CRIMINAL REVISION NO. 171 OF 2015
RONALD MWASAMBU KITIAPPLICANT
VERSUS
REPUBLICRESPONDENT
RULING

This is a ruling in an application by way of an undated notice of motion under Article 22 (1) of the Constitution seeking to file review petition in accordance to Article 23 (3) (f) and 50(2) of the Constitution.

The reason for this are;

1. The applicant is a 1st offender.
2. The honourable court to review the conviction and impose a favorable fine in place of the sentence against the applicant.
3. The applicant has been sick and been undergoing treatment that since his conviction and his stay in prison, his condition has worsened as evidenced by the medical treatment.

The application is supported by the grounds in the supporting affidavit.

During the hearing, the applicant submitted that he was seeking leave to file review petition since his health was deteriorating, and he has a family.

The application is opposed by M/s Ocholla, learned state counsel who submitted that the sentence imposed against the applicant was lawful as there was no illegality or impropriety on record with regard to it.

It was her contention that the applicant was charged and convicted under section 281 of the Penal Code which requires one to be sentenced to serve seven (7) years imprisonment.

She submitted that the applicant was sentenced to serve 2 years imprisonment after noting that he was a 1st offender and has a family.

She also submitted that the applicant can be treated at the medicinal facilities where he is being held.

She then submitted that the applicant ought to have filed an appeal pursuant to section 354 (5) of the Criminal Procedure Code since the sentence was lawful.

The applicant agrees with the submissions by the state counsel but prayed for an alternative of fine.

The applicant was charged with the offence of stealing by servant contrary to section 281 of the Penal Code whereby he was alleged to have stolen 5 litres of chlorine valued at Ksh 1741 from Swahili Beach Resort on 9th May, 2013, where he was a servant and came to him possession by virtue of that.

The applicant underwent full trial whereby he was found guilty, convicted and sentenced to serve two (2) years imprisonment.

Article 22 (1) of the constitution provides that

“Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of rights has been denied, violated or infringed or is threatened”.

Article 23(3) (p) provides that;

***“In any proceedings brought under Article 22, a court may grant appropriate relief, including;
(f) an order of judicial review”***

Article 50 (2) of the constitution states that;

***“Every person has the right to a fair trial which includes the right -
(a) If convicted, to appeal to or apply for review by, a higher court as prescribed by law”.***

In the instant case, I find that the trial was properly conducted and resulted into a determination, so that even if it ended in having the applicant committed to jail, this is the right position until, or unless the judgement is set aside on appeal.

In this application, the applicant has not demonstrated which of his right has been denied, violated or infringed or threatened to warrant the same under Article 22 (1) of the Constitution.

I find that the application is misplaced and an abuse of courts process.

For the orders the applicant seeks, he ought to approach court through an appeal.

Ruling delivered, dated and signed this 17th day of February, 2016.

D. O. CHEPKWONY

JUDGE

In the presence of:

M/s Ocholla for the state

The Applicant

C/clerk- Kiarie