



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
CRIMINAL REVISION CASE NO. 22 OF 2014

(CONSOLIDATED WITH HCR. REV. NO. 23 OF 2014)

LW.....1ST APPLICANT

EDWIN NJERU NGAI.....2ND APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(A Revision from the Sentence and Conviction of Ag. Senior Resident Magistrate Siakago in Criminal Case No. 964 of 2013 on 12th September, 2014)

R U L I N G

This case is before me for revision under Section 362 ad 364 of the Criminal Procedure Code. The applicants were convicted by Siakago Ag. Senior Resident Magistrate on separate charges of handling stolen goods contrary to Section 322(1) of the Penal Code and sentenced to serve two (2) years imprisonment.

The revision applications filed by both applicants separately No. 22 of 2014 and 23 of 2014 were consolidated and heard together. The 1st applicant was found with a nokia phone, on pair of safari boots and a woofer all valued at Shs.21,000/= which were stolen property. She pleads for a linient sentence preferably non-custodial sentence on the grounds that:-

- (a) *She is pregnant with child and expecting a baby by December 2014;*
- (b) *She is asthmatic and HIV positive on ARVs medication;*
- (c) *That she has two school going kids whom she has left in the hands of members of her family;*
- (d) *She is a guardian of her sisters children who also need her care.*

This application was filled on 19th September 2014. She has produced an acknowledgment of birth notification for a newly born baby FGN whose date of birth is shown as 21/11/2014.

The 2nd applicant was found in possession of a nokia phone. He depones that he is an orphan under whose care his younger siblings are. He says he regrets his action that led to his conviction and pleads for a non-custodial sentence. Section 362 empowers this court to revise orders of subordinate courts where the magistrate may have committed illegality, irregularity or an impropriety.

I have perused the proceedings of the Ag. Senior Principal Magistrate. The maximum sentence under section 322 is hard labour and imprisonment for not less than 14 years imprisonment. The sentence meted out on the applicants was only two years which is very lenient.

Although the value of the property was not high, the sentence cannot be said to be harsh or excessive. The applicants concern is only sentence. I find no illegality, propriety or incorrectness as regards the sentence. It was lawful and commensurate with the offence.

The trial magistrate called for probation reports for the two applicants. None of them was found suitable for non-custodial sentence. The 1st applicant was said to be a dangerous person in society who was the mastermind in the offence. This came from the chief of her area who knew her well. The court referred to her as a person who was not remorseful even after conviction.

The 1st applicant ought to have annexed a medical report from a qualified doctor to show her alleged HIV positive and asthmatic status. This is not something she just allege but she requires to tender proof. The only thing she annexed was a sheet from Ministry of health Nascop showing a tick on the items of ARVs. This is insufficient to prove her status.

The prosecution did not oppose this application but I believe they did not have regard to the burden of proof of a fact alleged by any person as provided for by the law. It also appears the Respondent did not read the probation officers report of the 1st applicant which was not suitable.

The prison reforms in Kenya have placed our prisons on such a level that prisoners as well as young babies accompanying offenders are well looked after and provided with reasonable facilities. The 1st applicant need not worry about her young baby as she serves her term in prison.

The 2nd applicant has not given any satisfactory reasons why this court should review his sentence.

It is my finding that this application in respect of the two applicants is not compliant with the provisions of Section 362 of the Criminal procedure Code. I find it not merited and dismiss it with costs.

DELIVERED, SIGNED AND DATED AT EMBU THIS 20TH DAY OF JANUARY, 2015.

F. MUCHEMI

JUDGE

In the presence of:-

Both applicants

F. MUCHEMI

JUDGE