



REPUBLIC OF KENYA

IN THE HIGH COURT

AT MIGORI

CRIMINAL REVISION NO. 53 OF 2015

BETWEEN

GEORGE OLOO OKELLO.....ACCUSED

AND

REPUBLIC.....RESPONDENT

RULING

1. The applicant was charged and convicted for the offence of trafficking in narcotic drugs contrary to **section 4(a)** of the *Narcotics Drugs and Psychotropic Substances Control Act, 2014* in *Migori SPM Criminal Case No. 397 of 2010 at Senior Principal Magistrate's Court*. He lodged a first appeal to this court; *Migori HCCRA No. 73 of 2014*. On 21st November 2014, I delivered judgment on the following terms;

[22] As regards the sentence, the maximum sentence prescribed under section 3(2)(1)(a) is a maximum of 20 years imprisonment. The appellant admitted that he was not a first offender as he had been convicted in Nyeri Chief Magistrate's Court Criminal Case No. 887 of 2009 for drug trafficking and sentenced to 11 years imprisonment on 13th July 2010. He was found in possession of a substantial amount of cannabis sativa. Given the amount of substance he was found with, I impose a sentence of 7 years imprisonment.

[23] In summary the conviction and sentence are set aside and substituted with a conviction for the possession of cannabis sativa contrary to section 3(1) as read with section 3(2) of the Narcotic Drugs and Psychotropic Substances (Control) Act, 1994 and sentence of 7 years imprisonment effective from 17th April 2013 when the appellant was convicted and sentenced by the trial court.

2. On 22nd June 2015, the applicant has now moved this court for revision of the sentence imposed. The grounds set forth on the face of the application and supported by various annexures are as follows;

a. That the applicant has only two years left to complete his sentence.

b. That the appeal from the conviction in Nyeri was allowed and the High Court in *Nyeri HCCRA No. 183 and 183 of 2010* quashed the conviction and set aside the sentence.

c. That the court should consider revising the sentence to a non-custodial one on several humanitarian grounds. He states that he is 53 years old and is suffering from various physical,

emotional and psychological ailments he developed while in prison. That his wife passed away while he was serving his sentence and that his 3 children dropped out of school for lack of school fees and the 3 older ones are jobless and cannot support his family and that his larger family relied on him for support.

d. The applicant states that while in prison, he has learnt the error of his ways, has reformed and qualified as a tailor and is ready to join Kenyans in building the nation.

3. As this is an application for revision, I am guided by the provisions of **sections 362, 363 and 364** of the ***Criminal Procedure Code (Chapter 75 of the Laws of Kenya)*** and in particular **section 362** which provides as follows;

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 subordinate court.

4. It is clear that the power of revision of the High Court is limited to the court exercising powers over the subordinate court. Having exercised its power as the first appellate court, the High Court does not have the jurisdiction to revise its final appellate orders including revision of the sentence duly affirmed. Once an appeal has been determined, the court becomes *functus officio*.

5. I will however note that in considering the sentence, the court relied on the existing circumstances regarding his previous conviction. Given this and other circumstances, this case would be a proper case for the applicant to file a petition under **section 19** of the ***Power of Mercy Act, 2011*** for the Advisory Committee on the Power of Mercy to advise the President to commute or otherwise deal with the sentence as the facts may warrant.

6. As this court lacks jurisdiction, the application is struck out.

DATED and **DELIVERED** at **MIGORI** this 23rd day of **June** 2015

D.S. MAJANJA

JUDGE