



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
CRIMINAL (REVISION) CASE NO. 17 OF 2015

REPUBLIC..... APPLICANT

VERSUS

MURIMI NJIRU Alias KAMUCERE..... RESPONDENT

RULING

The applicant was charged and convicted by principal Magistrate Runyenjes of the offence of being in possession of Narcotic Drugs contrary to Section 3(1)(a) of the Narcotic Drugs and Psychotropic Substances (Control) Act No. 4 of 1994. The particulars of the charge were that in the 1st day of March, 2015 around 4.20 hours at Runyenjes Township within Embu County, he was found in possession of 21 rolls of bhang two of which were half smoked in contravention of the said Act.

The applicant pleaded guilty to the charge and after the facts of the case were read which he admitted, he was convicted of the offence. He was sentenced to serve two (2) years imprisonment.

In his undated application for revision filed in court on 2/7/2015, the applicant states that he is satisfied with the conviction and that all he wants is a revision of sentence.

The application was opposed by the State. Ms. Nandwa argued that the mitigation of the accused was taken into consideration during sentencing. Due to the fact that the offence was rampant, the applicant was sentenced to two years imprisonment. The State argues that the sentence is deterrent but reasonable and that it should not be disturbed.

The penalty for possession of narcotic drugs is prescribed in Section 3(1)(2)(a) as ten (10) to twenty (20) years imprisonment based on the conditions set out therein.

Section 3 provides:-

(1) *Subject to subsection (3), any person who has in his possession any narcotic drug or psychotropic substance shall be guilty of an offence.*

(2) *A person guilty of an offence under subsection (1) shall be liable—*

(a) in respect of cannabis, where the person satisfies the court that the cannabis was intended solely for his own consumption, to imprisonment for ten years and in every other case to imprisonment for twenty years; and

*The grounds upon which a sentence can be reviewed were set out in the case of **BMN VS REPUBLIC [2014] eKLR** the court held as follows;*

*The principles upon which an appellate Court will act in exercising its discretion to review or alter a sentence imposed by the trial court have been firmly settled as far back as 1954, in the case of **OGOLLA S/O OWUOR, [1954] EACA 270** wherein the predecessor of this Court stated:*

*The Court does not alter a sentence unless the trial Judge has acted upon wrong principles or overlooked some material factors". To this, we would add a third criterion namely, "that the sentence is manifestly excessive in view of the circumstances of the case (**R - v- Shershowsky [1912] CCA 28TLR 263**)."* See also In **Omuse - v- R (Supra)** while in the case of **Shadrack Kipkoech Kogo –v- R., Eldoret Criminal Appeal No.253 of 2003** the Court of Appeal stated thus:-

*Sentence is essentially an exercise of discretion by the trial court and for this court to interfere it must be shown that in passing the sentence, the sentencing court took into account an irrelevant factor or factor or that a wrong principle was applied or that short of these, the sentence itself is so excessive and therefore an error of principle must be interfered (see also **Sayeka –vs- R. [1989] KLR 306**).*

In the case of **KENNETH KIMANI KAMUNYU -VS- REPUBLIC [2006] eKLR** it is stated that an appellate Court can only interfere with the sentence if it is illegal or unlawful.

The above authorities demonstrate that sentence may only be reviewed on appeal where the appellant satisfies the court that the sentence was illegal, excessive or that the magistrate acted on the wrong principles or overlooked some material factors.

The appellant opted to bring an application for revision which is governed by Section 362 and 364 of the Criminal Procedure Code.

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, illegality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any subordinate court.

The applicant has not complained of any irregularity, illegality or impropriety of the order or sentence made by the trial magistrate. His plea for reducing sentence does not fall under Section 362 which is designed to correct any irregularity or illegality of an order of a subordinate court.

On perusal of the facts of the case, the magistrate made the correct finding and imposed the correct sentence. The orders require no application of Section 362.

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

DELIVERED, DATED AND SIGNED AT EMBU THIS 26TH DAY OF OCTOBER, 2015.

F. N. MUCHEMI

J U D G E

In the presence of:-

Ms. Nandwa for the Respondent

The Applicant