

REPUBLIC OF KENYA

High Court at Garissa

Criminal Revision 85 of 2012

SAMSON KING'AA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING ON REVISION

By a letter dated 30th July 2012 the applicant through his lawyer W. M. Musyoka sought revision of the orders of the then Senior Resident Magistrate at Kyuso contained in his decision dated 18th May 2011 in which he sentenced the applicant for 21 years for the offence of defilement. The record shows the applicant was charged with defilement and an alternative charge of committing an indecent act with a child. He pleaded guilty to the alternative charge for which he was convicted and sentenced.

The grounds for revision are that the trial magistrate erred in law in finding that the applicant had pleaded guilty to the charge of defilement; in failing to find that section 198 of the Criminal Procedure Code was complied with; in failing to uphold the applicant's constitutional rights under Article 50 (b) and (m); in failing to find that the facts read out in court did not disclose the offence charged with and that the proceedings in the trial court amounted to a mistrial.

I have read the brief proceedings from the lower court and have confirmed the charges preferred against the applicant and what transpired in the lower court. The power of the High Court to revise criminal proceedings in the lower courts is given under section 362 of the Criminal Procedure Code where it is stated that:

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 such subordinate court.

The provisions of section 364 (5) of the Criminal Procedure Code are specific that when an appeal lies from a finding, sentence or order, and no appeal is brought, no proceedings by way of revision shall be entertained at the insistence of the party who could have appealed. I have read the grounds of revision advanced and it is my considered opinion that this is a matter that falls under the provisions of section 364 (5) above. For this reason this court declines to review the orders of the lower court as sought. The applicant is at liberty to file an appeal against those orders. Orders are made accordingly.

S.N. Mutuku

Judge

Dated, signed and delivered on 18th March 2013.