



REPUBLIC OF KENYA
IN THE HIGH COURT
AT NAIROBI
MILIMANI LAW COURTS
Criminal Revision 26 of 2012

JANE NELLY AWOUR.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. Strictly speaking what is before me is not an application for **REVISION**. According to **Section 362 Criminal Procedure Code**, a matter comes before the High court for **REVISION** if it has come for purposes of the court satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed therein, and as to the regularity of any proceedings in the subordinate court.
2. In the matter before me the learned counsel Mr. Swaka appealing for the applicant, is asking the court, of its own motion, to revise the custodial sentence imposed upon the applicant.
3. According to the learned counsel's letter dated 12th March 2012 by which he moved this court the applicant was sentenced to serve five years imprisonment without option of fine. The sentence was with regard to the offence of trafficking in narcotic drugs contrary to **Section 4(a) of Act No. 4 of 1994**. The applicant was so sentenced after the court found that she was in possession of 1kg of Diacetylmorphine in Solution and mixture form.
4. The sentence commenced on 6th August 2009 and the applicant is due for release in December 2012.
5. The learned counsel pointed out that it is not their argument that the sentence inflicted upon the appellant by the trial court was harsh, nor does the applicant challenge it in any way.
6. I note that at the time of sentence the applicant was treated as a first offender. According to her counsel, she has learnt the error of her former ways and is a changed person. She has even embraced Christianity and now leads other inmates in prayers in prison.

7. Be that as it may, the applicant must render into Caesar what belongs to Caesar even as the applicant has decided to turn her life around and is now rendering unto God what belongs to God.

8. The learned counsel made very passionate submissions on behalf of the applicant but there is, however, very little before me by which I may consider the applicant's earlier circumstances to compare with this new changed creature. This would have required that the learned counsel submit with this application, the proceedings by which the applicant was convicted.

9. Without the lower court proceedings the court has no sight of the circumstances of the offence, nor the reasoning of the learned trial magistrate as she passed sentence upon the applicant. This would also indicate whether the applicant was convicted on her own plea or after a long drawn out trial. Court in passing sentence weighs the evidence and the circumstances of the case before it, to see that the crime fits the punishment.

10. Since the applicant has not urged that the conviction was faulty, nor that the sentence was harsh or excessive in any manner, and there being no material upon which this court may decide that the interests of justice will be better served by reducing the applicant's sentence, except of course, for the submissions of her advocate from the bar, I find that there is not enough material before me upon which I may exercise my discretion.

Reasons wherefore the application is dismissed.

SIGNED DATED and **DELIVERED** in open court this **14TH** day of **JUNE**, 2012.

L. A. ACHODE

JUDGE