



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA

AT KITALE.

CRIMINAL REVISION NO. 52 OF 2011.

BENARD KWEMOI SSUNGWANYA ::::::::::::::::::::::::::::::: APPLICANT.

VERSUS

REPUBLIC ::: RESPONDENT.

R U L I N G.

The applicant seeks to have his sentence considered on the following grounds;

1. He pleaded guilty to the charges.
 2. He is weak and sickly (he is anemic)
 3. He underwent operation on 11th June, 2011.
 4. He is the sole bread winner of his family.
 5. He has a family of 11. Two (2) children in secondary school, five (5) in primary and two (2) in laws who are under his care after losing their parents and they are also students one in form two another one in form four.
 6. He stays in a rental house with his family.
 7. He is a peasant farmer while his wife operates a small grocery within.
- More grounds to be produced during the hearing of my application.

The applicant has filed both an application to review his sentence on the basis that his family is suffering. The same is assigned no 52 of 2011.

Revision is ideally supposed to be brought under section 362 of the court. It is when there is. There is no error that is apparent on record.

The prison decongestion process is initiated by the probation department under the community service order regime.

The applicant has filed an appeal as evidenced by the letter of the DR dated 21st of January 2011. What ought to be done is for the DR to send a reminder for the records to be availed.

Section 382 of the Criminal Procedure Code states that 382. *Subject to the Provisions hereinbefore contained, no finding, sentence or order passed by a court of competent jurisdiction shall be reversed or altered on appeal or revision on account of an error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during the trial or in any injury or other proceedings under this code, unless the error, omission or irregularity has occasioned a failure of justice:*

Provided that in determining whether an error, omission or irregularity has occasioned a failure of justice the Court shall have regard to the question whether the objection could and should have been raised at an earlier stage in the proceedings.”

There are no errors or irregularities warranting a revision.

There is a need to note that there are certain distinctive features about revision.

- (i) The High Court has complete discretion in revision (i.e. it is not bound to revise) because the revisionary power is discretionary.
- (ii) In exercise of these powers no party or person is entitled, as of right, to appear before the High Court but the court may invite a party to be present at the hearing.
- (iii) There is no time limit between which an order may be revised, unlike appeals which have to be brought within a specified period.
- (iv) In revising orders, the High Court may act on its own motion (i.e. without being moved by either party to the matter)
- (v) Both the appellate and revisionary powers of the High Court are aimed at correcting errors of subordinate courts. The basic difference between the two modes lies in the methods of bringing the matter complained of before the High Court.

This application is misplaced and the same is disallowed

READ, DATED & SIGNED IN THE OPEN COURT THIS 24TH DAY OF NOVEMBER 2011.

S.M. MUKETI
JUDGE