

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS

Revision Case 19 of 2008

FRANCISCA KAVUU MUTUA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING ON A REVISION

1. On 26.2.2008 the Principal State Counsel, Machakos addressed a letter to the Deputy Registrar of this Court raising doubts as to the legality of the sentences meted out to Fransisca Kavuu Mutua in Machakos CMs Court Criminal Cases Nos. 2092, 2094,2095 of 2005. The said letter was not brought to my attention until the said Francisca Kavuu Mutua brought the same issues to this court by way of an Application for revision placed before me on 14.10.2008.

2. I have called for the lower court record and I note that the offender had faced multiple counts of the offences of manslaughter contrary to section 202 as read with section 205 of the Penal Code in each of the three files mentioned above. After a lengthy trial she was found guilty and in sentencing her, the learned Chief Magistrate noted as follows:-

“I also take into account the period spent in custody which is close to 2 years... ideally I would have sentenced her to serve 7 years imprisonment but considering that she has been in custody for almost 2 years, I sentence her to serve 5 years on each count proved on each separate file. The sentences to run concurrently.”

3. The sentence was meted out in Cr.Case No.2092/2005 but the separate files referred to include Cr.case no. 2094/2005 and 2095/2005 which also had twelve counts of the offence of manslaughter. In his letter of 26.2.2008, the Principal State Counsel noted that the subject is now serving a total of 105 years in prison and his view was that the cumulative period of sentence should be 5 years for each file and therefore in total 15 years for the 3 separate files.

4. I have elsewhere above reproduced the exact wording used by the Chief Magistrate and indeed in her Application now before me, the Applicant states as follows:-

“That I was convicted to serve fifteen (15) years.

That I am requesting this honourable court to impose an option of a fine.”

5. The Principal State Counsel’s view that the sentence imposed may have been misconstrued by the Prison Authorities has no basis and that is all I can say because the Applicant has indeed confirmed that she is serving the lawfully imposed sentence. Should I intervene and impose the option of a fine? I do not think so. The number of deaths involved in this case is way too large for me to show leniency and I have not been told what special circumstances should warrant my intervention under section 362 and section 364 of the Criminal Procedure Code. It is not enough for the Applicant to state that she is reformed and begs forgiveness.

6. In the event, I shall not reverse the sentence meted as is the Applicant’s prayer.

7. Orders accordingly.

Dated and delivered at Machakos this **21st** day of **October 2008**.

Isaac Lenaola

Judge