Aninkoi & another v Republic (Revision Case E116 of 2021) [2024] KEHC 785 (KLR) (2 February 2024) (Ruling)

Neutral citation: [2024] KEHC 785 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT LODWAR

REVISION CASE E116 OF 2021

RN NYAKUNDI, J

FEBRUARY 2, 2024

BETWEEN

CATHERINE ANINKOI ..... 1ST APPLICANT

NICHODEMUS EKENO ESUBON ..... 2ND APPLICANT

AND

REPUBLIC ..... RESPONDENT

RULING

1. Before me is an application for revision dated 10th August, 2021 by the Kenya Revenue Authority and the Office of the Director of Public Prosecutions. The said bodies request this court to call for proceedings in the Chief Magistrate's court at Lodwar Cr No. E353 of 2021; *Republic versus Catherin Aninkoi and Nicodemus Ekeno Esubon*, for this court to be satisfied as to the correctness, legality or propriety of the orders given.

2. The application is based on the following grounds:

   i. On 26th July, 2021 Hon. Mwangi Karimi Chief Magistrate delivered a ruling in Chief Magistrate's Court at Lodwar Cr. No. E353 of 2021 where the honorable court gave an illegal sentence contrary to the provisions of the East Africa Community Customs Management Act, 2004.

   ii. That motor vehicles registration numbers KCZ 121Z, Mistubishi Fuso Lorry was intercepted at Nadapal Area near Kiatese within Turkana County on the 22nd April 2021 by customs and Boarder Control officers for suspicion of carrying unaccustomed goods. The motor vehicles were being driven by the second accused person.

   iii. Upon verification of the goods the customs officers found that motor vehicle registration number KCZ 121Z, was carrying 150 bags of unaccustomed sugar with a dutiable value of

Kshs. 404,513/= and 10,000 bottles of unaccustomed senator Beer Lager with a dutiable value of Kshs. 520,000/= all products of the Republic of Uganda.

iv. That investigations linked the 1st accused person as the owner of the goods.

3. The accused persons were charged with the following offences:

a. Conveying unaccustomed goods contrary to section 199(b) iii of the *East Africa Community Customs Management Act* 2004 for the second accused.

b. Two counts of importing restricted goods contrary to section 200(a) ii as read with section 210 (b) of the *East Africa Community Customs Management Act*, 2004 for both accused persons.

4. The accused persons pleaded guilty to the offences on the 14th July, 2021 where the Honorbale magistrate sentences each accused person on the 29th July, 2021 as follows:

a. Count i – 1st Accused person to pay a fine of Kshs. 100,000/= or imprisonment for a term in 6 months.

b. Count ii – 2nd Accused person to pay a fine of Kshs. 100,000/= or for imprisonment for a term of 6 months.

c. Count iii – 1st Accused person to pay a fine of Kshs. 100,000/= or to imprisonment for a term of 6 months.

Decision

5. Jurisdiction on revision can be exercised under Article 165 (6) & (7) of the *constitution* as read with sections 362 and 364 of the *criminal procedure code*. The salient features of this jurisdiction revolves around the following categories upon which the high court can review the orders of an inferior court;

a. Where the trial court has wrongly shut out evidence which the prosecution wished to produce,

b. Where the admissible evidence is wrongly brushed aside as inadmissible,

c. Where the trial court has no jurisdiction to try the case and has still acquitted the accused,

d. Where the material evidence has been overlooked either by the trial court or the appellate court or the order is passed by considering irrelevant evidence, and

e. Where the acquittal is based on the compounding of the offence which is invalid under the law"

6. I have considered the present application and without digging deeper, one thing stands out. The application has been overtaken by events. The sentences and directions were issued back in 2021 and presumably, the accused persons have already served their term or even paid the imposed fines. Therefore, a matter that has been overtaken by events is not tenable. Asking this court to recall the lower court file would be an exercise in futility

7. With these objectives in view the applicants have not brought themselves within the purview of Article 165 (6) & (7) of the *constitution* and further in the guidelines provided for in sections 362 and 364 of *the CPC*. In the circumstances, the application dated 10th August, 2021 is hereby treated as having been overtaken by events and struck out accordingly with each party bearing their own costs of the application.

Orders accordingly.

DATED AND SIGNED AT LODWAR THIS 2ND FEBRUARY, 2024

In the presence of;

Mr. Yusuf for the state

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R. NYAKUNDI

JUDGE