



**Ordijhe v Republic (Criminal Revision 70 of 2023)  
[2024] KEHC 5066 (KLR) (15 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5066 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL REVISION 70 OF 2023**

**DR KAVEDZA, J**

**MAY 15, 2024**

**BETWEEN**

**MIKE ORDIJHE ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant was charged and convicted for the offence of trafficking in narcotic drugs contrary to section 4 (a) of the *Narcotic Drugs and Psychotropic Substances (Control) Act* No. 4 of 1994. On 17<sup>th</sup> October 2023, he was sentenced to serve 30 years imprisonment. In addition, he was sentenced to pay a fine of Kshs. 32,400,000 in default to serve 1-year imprisonment.
2. He has filed the present notice of motion seeking revision of sentence. The application is supported by an affidavit sworn by the applicant. The averments made are that he suffers from chronic back pain and needs specialised treatment. He is a foreigner with no source of income and cannot pay the fine imposed by the court. Since his incarceration, he has undergone rehabilitation. He contended that the sentence imposed was harsh and manifestly excessive. He relied on the case of *Ogolla S/O Owuor* [1954] EACA 270. He urged the court to revise the sentence imposed.
3. I have considered the application, the written submissions by the respective parties and the applicable law.
4. The power of this court in its revisionary jurisdiction is founded under Section 362 of the *Criminal Procedure Code* which provides that:

The High Court may call for and examine the record of any criminal proceedings before any subordinate court to satisfy 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.

Article 165(6) of the *Constitution* provides that:



The High Court has supervisory jurisdiction over the subordinate courts and over any person, body, or authority exercising a judicial or quasi-judicial function, but not over a superior court.

5. On the merits of the application, the applicant seeks a review of the sentence of the trial magistrate court. Before the trial court, the applicant was sentenced to serve thirty (30) years imprisonment in addition to the payment of a fine. The Court of Appeal in the case of *Evans Nyamari v Republic* Criminal - Kisumu (Court of Appeal) Criminal Appeal 22 of 2018 and *Julius Kitsao Manyeso v Republic* - Malindi (Court of Appeal) Criminal Appeal No. 12 of 2021 the Court in applying Articles 27 and 28 of the *Constitution* to sentencing, declared that life imprisonment means a determinate sentence of thirty (30) years imprisonment. The same principle is consequently applicable for the applicant who was sentenced to serve thirty (30) years imprisonment.
6. Section 329 of the *Criminal Procedure Code*, gives judges and magistrates, in appropriate cases to consider mitigation and mete out a sentence that fits the offence committed despite another sentence being provided for under the Act in which the offence is prescribed. In that regard, I find that the sentence meted out was lawful and in accordance with trial magistrate's discretion. Although the sentence imposed by the trial court was lawful, I find that it was harsh and excessive.
7. Therefore, the application for sentence review succeeds. The sentence of 30 years imprisonment is hereby substituted with a sentence of 15 years imprisonment. The additional sentence of payment of a fine of Ksh. 32,400,000 in default to serve 12 months imprisonment is upheld. Consequently, the sentence is as follows:
  - i. The applicant Mike Ordijhe is sentenced to pay a fine of Kshs. 32,400,000 in default to serve 12 months imprisonment in accordance with section 28(2) of the *Penal Code*, Cap 63 Laws of Kenya.
  - ii. In addition to the sentence in (1) above, the applicant is sentenced to serve fifteen (15) years imprisonment with effect from 15<sup>th</sup> November 2020, the date of his arrest under the section 333 (2) of the *Criminal Procedure Code*.
  - iii. The sentences imposed shall run consecutively.
  - iv. Upon completion of his sentence, the applicant shall be repatriated to his country of origin, Nigeria.

Orders accordingly.

**RULING DATED AND DELIVERED VIRTUALLY THIS 15<sup>TH</sup> DAY OF MAY 2024**

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**D. KAVEDZA**

**JUDGE**

In the presence of:

Hamisi Nzari for the Applicant

Applicant present

Ms. Tumaini for the Respondent

Joy Court Assistant

