



**Jeruto v Republic (Criminal Revision E051 of 2024)
[2024] KEHC 10891 (KLR) (20 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 10891 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ITEN
CRIMINAL REVISION E051 OF 2024
JRA WANANDA, J
SEPTEMBER 20, 2024**

BETWEEN

CATHERINE JERUTO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant was charged in Iten Senior Principal Magistrate’s Court Criminal Case No. E326 of 2024 with the offence of possession of alcoholic drinks without a licence contrary to Section 27(4) of the *Alcoholic Drinks Control Act* No. 4 of 2010. She was alleged to have been found in possession of 17 litres of chan’gaa. She pleaded guilty and on such own plea of guilty, was convicted and sentenced to serve 12 months imprisonment.
2. The Applicant has now, vide the undated Notice of Motion but filed on 17/05/2024, moved to this Court requesting it to invoke its supervisory powers of Revision and reduce the sentence. She stated that since she was imprisoned, her health has worsened with a diagnosis of high blood pressure, chronic respiratory disease, back pain, allergies, peptic ulcers and chest infection, and that she was a 1st offender, is remorseful and reformed and thus begs for leniency as she requires special care and treatment. She stated further that in view of the said circumstances, the sentence of 12 months imprisonment is overly harsh and constitutes cruel and degrading punishment. She added that she has learnt a valuable lesson during her time in prison and she assured the Court that she will not engage in selling alcohol without a licence again. She therefore pleaded for a non-custodial sentence.
3. Prosecution Counsel Mr. Kirui informed the Court that he would not file any response and would thus leave the matter to the Court.



Determination

4. The jurisdiction of the High Court with regard to the powers of Revision is supervisory and is provided under the *Constitution* in Article 165 (6) and (7) in the following terms:

“6) 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.

(7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.”

5. Section 362 of the *Criminal Procedure Code*, then provides as follows:

“Revision

362. Power of High Court to call for records

The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying 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.”

6. The operative phrase in considering Applications for revision is therefore “correctness, legality or propriety” of any finding, sentence or order made by the lower Court.

7. The purpose and nature of the revisionary jurisdiction of the High Court was examined by Odunga J (as he then was) in the case of *Joseph Nduvi Mbuvi v Republic* [2019] eKLR in which he observed as follows:

“In my considered view, the object of the revisional jurisdiction of the High Court is to enable the high Court in appropriate cases, whether during the pendency of the proceedings in the subordinate court or at the conclusion of the proceedings to correct manifest irregularities or illegalities and give appropriate directions on the manner in which the trial, if still ongoing, should be proceeded with. In other words, the High Court’s revisionary jurisdiction includes ensuring that where the proceeding in the lower court has been legally derailed, necessary directions are given to bring the same back on track so that the trial proceeds towards its intended destination without hitches. Not only is the jurisdiction exercisable where the subordinate court has made a finding, sentence or order but goes on to state that it is also exercisable to determine the regularity of any proceedings of any such subordinate court as well.”

8. The issue that arises for determination in this matter is therefore “whether this Court should exercise its revisionary jurisdiction and reduce the sentence imposed”.



9. Regarding sentence, Majanja J, quoting the case of *Francis Karioko Muruatetu & Another v Republic* [2017] eKLR), in the case of *Michael Kathewa Laichena & another v Republic* [2018] eKLR, stated as follows:

“The Sentencing Policy Guidelines, 2016 (“the Guidelines”) published by the Kenya Judiciary provide a four tier methodology for determination of a custodial sentence. The starting point is establishing the custodial sentence under the applicable statute. Second, consider the mitigating circumstances or circumstances that would lessen the term of the custodial sentence. Third, aggravating circumstances that will go to increase the sentence. Fourth, weigh both aggravating and mitigating circumstances. Since the Guidelines did not take into account the fact that the death penalty would be declared unconstitutional, the Court in the *Muruatetu Case* (Supra, para. 71), considered that in re-sentencing in a case of murder, the following mitigating factors would be applicable;

- (a) age of the offender;
- (b) being a first offender;
- (c) whether the offender pleaded guilty;
- (d) character and record of the offender;
- (e) commission of the offence in response to gender-based violence;
- (f) remorsefulness of the offender;
- (g) the possibility of reform and social re-adaptation of the offender;
- (h) any other factor that the Court considers relevant.

10. Similarly, in the case of *Daniel Kipkosgei Letting v Republic* [2021] eKLR, the Court of Appeal pronounced itself as follows;

“With regard to the above, we observe that the purpose and objectives of sentencing as stated in the Judiciary Sentencing policy should be commensurate and proportionate to the crime committed and the manner in which it was committed. The sentencing should be one that meets the end of justice and ensures that the principles of proportionality, deterrence and rehabilitation are adhered to. In this regard we think that the complaint that the sentence imposed was harsh and excessive is valid though it was the only sentence available then. We are therefore inclined to interfere with it. We therefore set aside the sentence of life imprisonment imposed on the appellant. Having considered the mitigation proffered by the appellant on record the sentence that commends to us is 25 years imprisonment.”

11. Regarding sentence, Section 27(4) of the *Alcoholic Drinks Control Act* No 4 of 2010 provides as follows:

“A person who contravenes the provisions of this section commits an offence and shall be liable to a fine not exceeding two million shillings, or to imprisonment for a term not exceeding five years, or to both.”

12. It is therefore clear that the 12 months prison sentence imposed was well within the law. I also note that during mitigation, it was stated that the Applicant was a repeat offender.



13. It should always be recalled that the reversionary power of the High Court is not meant to be invoked to micro-manage the subordinate Courts. In respect to this caution, in the same case of Joseph Nduvi Mbuvi v Republic (*supra*), Odunga J stated further as follows:

“14. It is, however my view that the jurisdiction should not be invoked so as to micro-manage the Lower Courts in the conduct and management of their proceedings”

14. For the foregoing reasons, I find no reason to warrant any interference by this Court over the sentence imposed by the trial Court or to merit the exercise of this Court’s power of revision. The Appellant should, perhaps, submit her name for consideration during the next prison decongestion exercise.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 20TH DAY OF SEPTEMBER 2024

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WANANDA J.R. ANURO

JUDGE

Delivered in the presence of:

Applicant virtually from Iten High Court room

Mr. Okaka h/b for Kirui for the State

Court Assistant: Brian Kimani

