Munene v Republic (Criminal Revision E012 of 2024)
[2024] KEHC 12920 (KLR) (23 October 2024) (Ruling)

Neutral citation: [2024] KEHC 12920 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MURANG'A

CRIMINAL REVISION E012 OF 2024

CW GITHUA, J

OCTOBER 23, 2024

BETWEEN

HARRISON MWANGI MUNENE ..... APPLICANT

AND

REPUBLIC ..... RESPONDENT

RULING

1. In the Notice of Motion dated 5th January 2024, the applicant, Harrison Mwangi Munene, implores this court to review his sentence imposed by the trial court in Kangema Senior Principal Magistrate's Court Criminal Case No. E667 of 2023.

2. The record of the trial court reveals that the applicant was convicted on his own plea of guilty with the offence of threatening to kill contrary to Section 223 (1) of the *Penal Code*. He was sentenced to serve five (5) years imprisonment.

3. He now seeks to have his sentence revised by being substituted with a non-custodial sentence on grounds that he was now fully rehabilitated and was very remorseful and that he was the breadwinner for his family and aged parent.

4. The application was argued orally before me on 25th September 2024. In his brief oral submissions, the applicant contended that he committed the offence while drunk ; that he has since reconciled with the victim of the crime he committed and further, that he had contracted serious diseases while in prison.

5. The application is contested by the respondent. Ms. Muriu, learned prosecution counsel while opposing the application urged me to note the seriousness of the offence subject of the applicant's conviction. She argued that the impugned sentence was in fact lenient considering that the law prescribed a maximum sentence of ten (10) years imprisonment. She contended that the applicant has not complained that the trial court wrongly exercised its discretion when passing the sentence. Further, she requested me to note that the applicant was accused of having threatened to kill his mother and

to find that the sentence imposed was adequate. In her view, the application ought to be dismissed for want of merit.

6. I have duly considered the application together with the depositions made in the supporting affidavit and the parties brief oral submissions. I find that the only issue for my determination is whether the application met the threshold for sentence review.

7. The revisional jurisdiction of the High Court is conferred by Section 362 as read with Section 364 of the *Criminal Procedure Code* (CPC).

   Section 362 of the CPC empowers this court to call for and examine the record of any criminal proceedings before the lower court to satisfy itself as to the correctness, legality or propriety of any finding, sentence, or order recorded or passed and the regularity of proceedings before the trial court.

8. As correctly stated by Odunga J (as he then was) in *Joseph Nduvi Mbuvi v Republic*, (2019) eKLR ,

   > " .....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."

9. The only comment I would wish to make in addition to the foregoing observations by the learned judge is that where proceedings have been concluded by the lower court and no appeal had been filed, this court when determining an application for review still has power to give any orders it finds appropriate to further the interests of criminal justice and to ensure that no miscarriage of justice is visited on any party to the proceedings. In fact, by virtue of Section 364 of the *CPC*, the court when exercising its revisional jurisdiction is clothed with all the powers of an appellate court save that it cannot convert an order of acquittal to one of conviction.

10. It is trite that sentencing vests in the discretion of the trial court and when exercising its supervisory jurisdiction over subordinate courts, this court can only disturb the sentence of the trial court if it was satisfied that the court wrongly exercised its discretion by applying wrong legal principles; that it misapprehended the evidence placed before it or took into account extraneous factors. The court can also interfere with the sentence if it was convinced that it was harsh and excessive in the circumstances of the case - See: *Macharia v Republic* (2000) eKLR

11. In this case, the applicant admitted to having threatened to kill his own mother of 92 years. The facts of the case do not show that his elderly mother had done anything to provoke his anger before he committed the offence. The offence of threatening to kill is a serious offence which attracts a maximum sentence of ten years imprisonment. The applicant was sentenced to five years imprisonment which was in accordance with the law. When passing sentence, the trial magistrate considered the aggravating factors presented by the circumstances in which the offence was committed and the mitigation offered by the applicant. There is nothing to indicate that when passing sentence, the trial court erred either by abusing its discretion or applying wrong legal principles.

12. The applicant's main ground for seeking review is that he had contracted serious diseases in prison and that he had a fracture on his leg fixed with metal plates which had developed some complications. He has however not produced any evidence to substantiate these claims.

13. Although being ill is not per se a ground for review, if an applicant was able to prove by credible evidence that he suffers from an illness or a condition whose nature was such that it cannot be effectively managed in the prison's health facilities with the result that his life was likely to be in danger, the court can in such a situation exercise its discretion and review the applicant's sentence on terms it deemed just. As stated earlier, no such evidence has been availed to this court.

14. For the foregoing reasons, am satisfied that this application does not meet the parameters for review as stipulated by the law. The application thus lacks merit and it is hereby dismissed.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MURANG'A THIS 23RD DAY OF OCTOBER 2024.

C.W GITHUA

JUDGE

In the presence of :

The Applicant

Ms. Muriu for the Respondent

Ms. Susan Waiganjo Court Assistant.