Njuguna v Republic (Criminal Revision E034 of 2024)
[2024] KEHC 12987 (KLR) (9 October 2024) (Ruling)

Neutral citation: [2024] KEHC 12987 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MURANG'A

CRIMINAL REVISION E034 OF 2024

CW GITHUA, J

OCTOBER 9, 2024

BETWEEN

KELVIN MWANGI NJUGUNA ..... APPLICANT

AND

REPUBLIC ..... RESPONDENT

RULING

1. The applicant, Kelvin Mwangi Njuguna, approached this court through a Notice of Motion filed on 9th February 2024 seeking review of his sentence imposed in Murang'a Chief Magistrate's Court criminal Case No. 7 of 2021.

2. The application was filed by the applicant in person but he subsequently engaged an advocate, learned counsel Mr. Mbugua who decided to prosecute the application as filed. He however sought leave to file a further affidavit which leave was granted and the applicant swore a further affidavit which was filed on 9th April 2024.

3. A brief background to the application as reflected in the trial court's record is that the applicant was charged with the offence of Manslaughter contrary to Section 202 as read with Section 205 of the Penal Code. It was alleged that on 25th December 2020 at Kamaguta village in Kiria location within Kahuro sub-county in Murang'a County, he unlawfully caused the death of Nicholas Mwangi Kariuki.

4. After a full trial, the applicant was convicted of the offence and was sentenced to serve three years imprisonment. It is this sentence that the applicant urges this court to review by reducing it or substituting it with a non- custodial sentence.

5. In his supporting and further affidavits, the applicant laid down the grounds on which his application was anchored. In a nutshell, he complained that in sentencing him, the learned trial magistrate erred by finding that he lied in his statement in defence that he was a student at the Kenya Institute of Highways and Building Technology which was not true; that at the time he was sentenced, he had

already finished a short course at the aforesaid college and was awaiting admission for a certificate Course in Construction Plant Mechanic which he was now unable to pursue given his incarceration.

6. Further, the applicant faulted the learned trial magistrate for allegedly disregarding or ignoring the findings contained in the pre-sentence report which were favourable to him. He also urged this court to note that when he was convicted, he was only 22 years old and he was the sole breadwinner for his young family. He also claimed that for the time he has been in prison, he has learnt his lesson and if released, he will never again be in conflict with the law.

7. The application is opposed by the State through a replying affidavit sworn on 19th July 2024 by learned Prosecution Counsel Ms. Muriu.

   Ms. Muriu deposed that the applicant had introduced new evidence in the form of the annextures to his further affidavit which ought to be struck out since they had not been tendered before the trial court. She supported the trial court's sentence arguing that it was proper and sound in law; that the trial court actually considered the pre- sentence report but the same was not binding on him. In her view, the application lacked merit and ought to be dismissed.

8. The application was canvassed orally before me on 25th September 2024. In their submissions, Learned Counsel for both parties re-iterated and expounded on the depositions made by the applicant in support and those made by Ms. Muriu in opposition to the application.

9. Having duly considered the application and the oral submissions made by both Counsel as well as the authorities cited, I find that the only issue arising for my determination is whether the application meets the threshold for sentence review.

10. The revisional jurisdiction of this court is donated by Section 362 as read with Section 364 of the Criminal Procedure Code (CPC) Section 362 empowers this court to call for and examine the record of proceedings of the lower court in order to satisfy itself as to the correctness, legality or propriety of any findings, sentence or order recorded or passed by the trial court and the regularity of any proceedings leading to the impugned order or decision.

11. The object of the court's revisional jurisdiction was discussed by Odunga, J (as he then was) in the persuasive authority of Joseph Nduvi Mbuvi V Republic (2019) KEHC 9895 (KLR), when he stated as follows:

> ".....The object of revisionary powers of the High Court is to confer upon the High Court a kind of "paternal or supervisory jurisdiction" in order to correct or prevent a miscarriage of justice. In a revision the main question to be considered is whether substantial justice has been done or will be done and whether any order made by the lower court should be interfered with in the interest of justice....."

12. Before I go to the merits or otherwise of the application, it is important to note at the outset that sentencing is a matter that rests in the sole discretion of the trial court. That discretion must however be exercised judiciously on the material placed before the trial court and in accordance with the law.

13. In the exercise of its supervisory jurisdiction which includes both appellate and revisional jurisdictions, the High Court is only mandated to interfere with the trial court's sentence if it was satisfied that the impugned sentence was either illegal in the sense that it was contrary to the law or that when passing sentence, the learned trial magistrate erred by applying wrong legal principles or considered extraneous matters or failed to consider relevant ones. The court can also disturb the trial court's sentence if it was convinced that the sentence was harsh and manifestly excessive taking into account the facts and

circumstances of the case in question. See: *Bernard Kimani Gacheru V Republic, Cr App No. 188 of 2000*.

14. Turning now to the present application, my reading of the trial court's pre-sentence notes shows clearly that before passing the impugned sentence, the trial court considered all the aggravating and mitigating circumstances in the case. The learned trial magistrate not only considered the gravity of the offence with which the applicant was convicted but also his age and family responsibilities. He also considered the Judiciary Sentencing Guidelines.

15. Contrary to the applicant's claim, the record reveals that the learned trial magistrate took into account the content and recommendation in the presentence report but chose not to follow the recommendation. The learned trial magistrate took the view that in order to reform, the applicant required an institutionalized mode of rehabilitation as opposed to a non-custodial sentence as proposed in the pre-sentence report.

16. I am unable to fault the learned trial magistrate's decision because a pre - sentence report is basically a social report which must be considered alongside all the aggravating and mitigating circumstances in a case and cannot be considered in isolation. Fundamentally, as correctly submitted by Ms. Muriu, it is not binding on the court. Its purpose is to inform the court about the offender's background, family circumstances, his social standing in society and the circumstances which may have led the offender to commit the offence as well as the views of the victim or victim's family. The main objective of a pre=sentence report is to guide the court in identifying the most suitable sentence for the offender before it.

17. Another reason why I do not fault the learned trial magistrate's decision is because manslaughter is a very serious offence which attracts a maximum penalty of life imprisonment. In this case, the applicant was actually lucky to escape with a sentence of three (3) years imprisonment.

18. Having considered the trial courts record, I have found no indication that in sentencing the applicant, the learned trial magistrate abused his discretion or applied wrong legal principles. The evidence contained in the annextures to the applicant's further affidavit were not availed to the trial court and since they were not part of the trial court's record, the trial court cannot be faulted for making the findings it did regarding the applicant's student status.

19. In my view, a sentence of three years imprisonment for the offence of manslaughter was very lenient considering that the penalty prescribed for the offence is a maximum of life imprisonment. Even if the applicant was a young man with a whole life ahead of him, a young life was lost due to his unlawful action which life cannot be recovered or replaced. But since the trial court in the exercise of its discretion settled on a sentence of three years imprisonment, I cannot interfere with the sentence just because I was of the view that the applicant deserved a stiffer sentence. I say this because I cannot substitute my discretion with that of the trial court.

20. Flowing from the foregoing, I have come to the conclusion that this application lacks merit and it is hereby dismissed.

C.W GITHUA

JUDGE

DATED, SIGNED AND DELIVERED AT MURAN'GA THIS 9TH OCTOBER 2024.

In the presence of :

The Applicant

Mr. Ndonga holding brief for Mr. Mbugua for the Applicant.

Ms. Muriu for the Respondent

Ms. Susan Waiganjo Court Assistant