



REPUBLIC OF KENYA



**Njoroge v Republic (Criminal Revision E025 of 2022)
[2023] KEHC 678 (KLR) (5 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 678 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CRIMINAL REVISION E025 OF 2022
GL NZIOKA, J
JANUARY 5, 2023**

BETWEEN

JOSEPH GITHAE NJOROGE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was arraigned before the Senior Principal Magistrate's Court at Engineer charged vide Criminal Case No. E3092 of 2021, with the offence of being in possession of forest produce contrary to section 64 (1) (a) as read with section 64 (2) of the *Forest and Conservation Act* No. 34 of 2016. The particulars of the charge are as per the charge sheet.
2. He pleaded guilty, convicted on his own plea of guilty and sentenced to pay a fine of Kenya Shillings one hundred thousand (Kshs. 100,0000) in default serve two (2) years imprisonment.
3. However, he seeks for sentence review based on the notice of motion application filed in court on March 9, 2022, in which he prays that the custodial sentence be reduced or converted to a non-custodial sentence.
4. He relies on the mitigation grounds in which he states that as follows: -
 - a. That, I am a first offender.
 - b. That, I pleaded guilty of the offence.
 - c. That, I am remorseful of my offence.
 - d. That, I have learnt to be a law-abiding citizen.
 - e. That, I am from a poor family background.



- f. That, I would like to go out to cater for my family as well as building the nation.
5. The respondent did not file any response to the application. Be as it were, the law that govern the revisionary power of the High Court is stipulated under sections 362 of the *Criminal Procedure Code* (herein “the Code”), which states as follows:
- “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. However, that section should be read together with section 364 of the *Code* which states as follow: -
- “(1) In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may—
- (a) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 354, 357 and 358, and may enhance the sentence;
- (b) in the case of any other order other than an order of acquittal, alter or reverse the order.
- (2) No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence: Provided that this subsection shall not apply to an order made where a subordinate court has failed to pass a sentence which it was required to pass under the written law creating the offence concerned.
- (3) Where the sentence dealt with under this section has been passed by a subordinate court, the High Court shall not inflict a greater punishment for the offence which in the opinion of the High Court the accused has committed than might have been inflicted by the court which imposed the sentence.
- (4) Nothing in this section shall be deemed to authorize the High Court to convert a finding of acquittal into one of conviction.
- (5) When an appeal lies from a finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed”
7. It is therefore clear from the above provisions that, the court will only exercise its revisionary powers where, the impugned sentence is either incorrect, illegal or improper. The objective of revisionary jurisdiction is to set right a patent defect or error of jurisdiction or law. This jurisdiction will only be invoked where the decision under challenge is; grossly onerous, there is no compliance with the provisions of the law, or the finding re-ordered are based on no evidence, or material evidence is ignored or judicial discretion is exercised arbitrarily or perversely.
8. As such, it is not the responsibility of the High Court to take into account the benefit of the evidence, it merely has to see if the provisions of the law have been properly adhered to by the court whose order



is the subject of the revision, as held in; Major S.S Khanna vs Brig F.J Dillon 1964 AIR 497, 1964 SCR (4) 409).

9. Further, the revision jurisdiction does not allow the court to interfere and correct errors of facts, or of law when the order is within the jurisdiction of the subordinate court; even if the order is right or wrong, or in accordance with the law, unless it exercised its jurisdiction illegally or with material irregularity. Reference is made to the cases of; Wesley Kiptui Rutto & Another vs Republic [2017] eKLR, Republic vs Everlyne Wamuyu Ngumo (2016) eKLR, and Public Prosecutors vs Muhavi Bi Mond Jani & another 1996 4 LRC 728, 743-5, DPP vs Samuel Kimuche.
10. Having considered the application, I find that the offence with which, the applicant is convicted and sentenced is provided for under section 64 (1) (a) as read with section 64 (2) of the Forest and Conservation Act No. 34 of 2016, which states as follows: -
 - “(1) Except under a licence or permit or a management agreement issued or entered into under this Act, no person shall, in a public or provisional forest—
 - a. fell, cut, take, burn, injure or remove any forest produce,”
 - (2) Any person who contravenes the provisions of subsection (1) of this section commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.”
11. The sentence meted out in the present case is a fine of; Kshs. 100,000 in default an imprisonment term of two (2) years. As such the default imprisonment term of two (2) years is unlawful. I therefore reverse the default custodial sentence from two (2) years to six (6) months. The relevant record be rectified accordingly.
12. It is so ordered.

DATED, DELIVERED AND SIGNED ON THIS 5TH DAY OF JANUARY 2023

GRACE L. NZIOKA

JUDGE

In the presence of:

Applicant in person.

Mr Michuki for the Respondent.

Ms Ogutu: Court Assistant

