



**Waweru & 3 others v Republic; Mwangi (Interested Party) (Criminal Revision E287 of 2022) [2023] KEHC 2376 (KLR) (Crim) (14 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2376 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
CRIMINAL REVISION E287 OF 2022  
JM BWONWONG'A, J  
MARCH 14, 2023**

**BETWEEN**

**PETER KAMAU WAWERU ..... 1<sup>ST</sup> APPLICANT  
PETER NJUGUNA ..... 2<sup>ND</sup> APPLICANT  
DOUGLAS MWAURA ..... 3<sup>RD</sup> APPLICANT  
SAMUEL MURITHI ..... 4<sup>TH</sup> APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**AND**

**ANDREW GICHIMU MWANGI ..... INTERESTED PARTY**

*(Being an application for revision of the sentence imposed by Hon. J. Omburah, S.P.M, delivered on 8th November 2022 in Nairobi City County in the Chief Magistrate's Court in Criminal Case No. 1488B of 2021 Nairobi City County (Prosecutor) vs Andrew Gichimu Mwangi & 4 others)*

**RULING**

1. The applicants were convicted on their own pleas of guilty by the lower court on four counts of offences under the [Environment Management and Coordination Act](#) No. 75 of 1999.
2. The accused/applicants were convicted on the following counts.  
Count I operating an illegal waste disposal site/plant without authority contrary to section 87 (3) of the Act.  
Count 2 disposing of hazardous waste contrary to section 141 (F) of the Act.



Count 3 emitting pollutants into the environment contrary to section 142 (1) (b) of the Act.

Count 4 Transporting of waste without authority contrary to section 87 (2) of the Act.

3. On 03/11/2022 the applicants were along Thika road the applicants were found operating a dumping site which was illegal where they had kept broken bottles, mixed white used plastic cups and garbage and other waste.
4. The applicants did not have a waste management plan from NEMA and the site was not approved for the disposal of waste.
5. They were each sentenced as follows.  
In count 1 they were sentenced to a fine of Kshs. 100,000/- in default to serve 12 months imprisonment.  
In count 2 they were sentenced to a fine of Kshs. 60,000/- in default to serve 6 months imprisonment.  
In count 3 they were sentenced to a fine of Kshs. 60,000/- in default to serve 6 months imprisonment.  
In count 4 they were sentenced to a fine of Kshs. 50,000/- in default to serve 6 months imprisonment.
5. Being aggrieved with the sentences, they filed a notice of motion dated November 15, 2022 seeking revision of the sentences of the subordinate court.
6. The application is premised on the grounds set out on the face of the notice of motion and supported by an affidavit sworn by the interested party.
7. The grounds raised are as follows. The sentences imposed by the trial court were excessive. They are unable to raise the fines imposed by the court. The applicants, who are employees of the interested party mistakenly pleaded guilty to the charges with the belief that the principal will bear the liability on their behalf.
8. The fines imposed by the trial court are duplicitous in nature as each of the applicants have been fined on all the counts.
9. In response, the respondent filed grounds of opposition dated December 29, 2022. The grounds raised are as follows. That the application is premature. The interested party lacks locus standi being a party in these proceedings. The application is misconceived as section 362 and 364 and 365 of the *Criminal Procedure Code* is not applicable. The trial court in sentencing the applicants exercised its discretion in accordance with the law.
10. The application lacks merits and should be dismissed in its entirety.

#### **The applicants' written submissions**

11. Mr. Mbogo learned counsel for the applicants submitted that only the owner of the site should have been sentenced and sentenced to a fine in count 1 and III. Further, only the driver of the impounded vehicle should have been sentenced in counts II and IV. Counsel argued that the sentences are duplicitous. He opined that the trial court ought to have imposed lenient sentences taking into account that the applicants pleaded guilty for the offences charged. In addition, he submitted that having pleaded guilty the applicants did not have an opportunity to provide relevant documents that would have exonerated them.
12. He urged the court to revise the sentences downwards to enable them to be set free.



### **The respondent's written submissions**

13. Mr. Chege learned counsel for the respondent submitted that the interested party was not properly enjoined as a party in this suit. Secondly, the applicants pleaded guilty and were given sufficient time to change their plea. He submitted that the charges were properly filed before the subordinate and the applicants sentenced on their own pleas of guilty.
14. Further, the sentences were in accordance with the sentencing guidelines.

### **Issues for determination**

15. Having considered the application, the response, the submissions of the parties and the applicable law, I find that the issue for determination is whether the applicants have made out a case for the grant of the orders sought.

### **Analysis and determination**

16. The power of this court in its revisionary jurisdiction is founded under section 362 of the *Criminal Procedure Code* (cap 75) Laws of Kenya 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.”
17. Additionally, article 165 (6) of the *Constitution* of Kenya 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.”
18. On the merits of the application, the applicants seek a review of the sentences of the lower court, which sentenced them to pay fines on four counts of the charges against them. Before the trial court, they had pleaded guilty. The arguments raised are that the sentences were too harsh and are duplicitous.
19. The question now arising herein is, does the sentences passed by the trial court warrant a review?
20. The applicants were convicted under section 87 (5) of the Environmental Management and Coordination Act in count I. It prescribes a term of not more than 2 years imprisonment or a fine of not more than 1 million. The trial court sentenced the applicants to pay a fine of Kshs. 100,000 in default 12 months imprisonment.
21. In count II, the Act provides for a fine of fine of not less than Kshs. 1 million or to an imprisonment term of not less than 2 years or both. The trial court sentenced them to pay a fine of Kshs. 60,000 in default 6 months imprisonment.
22. In count III, the Act provides for a fine of not more than Kshs. 500,000. The trial court sentenced them to pay a fine of Kshs. 60,000.
23. In count IV the Act prescribes a punishment of not more than 2 years or a fine not exceeding 1 million. The trial court fined the applicants Kshs. 50,000.



30. I find that the trial court failed to warn the applicants of the consequences of pleading guilty in respect of the sentences to be imposed. I therefore find that the pleas of guilty are not unequivocal.
31. In the premises, I find that the application of the applicants succeeds with the result that their convictions and sentences are hereby quashed.
32. Consequently, if the applicants are in custody, they are hereby set free unless they are held on other lawful warrants.
33. If the applicants paid the fines, these fines should be refunded subject to proof.

**RULING SIGNED, DATED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 14<sup>TH</sup> DAY OF MARCH 2023.**

**J M BWONWONG'A**

**JUDGE**

**In the presence of-**

Mr. Kinyua: Court Assistant

Mr. Mbogo for the applicants.

Mr. Mutuma for the respondent

