



REPUBLIC OF KENYA



KENYA LAW
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**Banaya v Republic (Criminal Revision E531 of 2023)
[2023] KEHC 19795 (KLR) (Crim) (6 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 19795 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL REVISION E531 OF 2023
DR KAVEDZA, J
JULY 6, 2023**

BETWEEN

OSMAN ADAN BANAYA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Before me is a Notice of Motion application by the applicant, Osman Adan Banaya, dated 22/6/2023, filed under certificate of urgency and supported by the affidavit of the applicant of even date, wherein he seeks revision of the sentence he is currently serving.
2. The applicant was sentenced to 6 months imprisonment on 14/6/2023 for the offence of uttering a false document contrary to section 353 of the *Penal Code*, Cap 63 Laws of Kenya vide JKIA Criminal Case Number E041 of 2023.
3. The applicant pleads that he was convicted on his own plea of “guilty” and sentenced to a custodial sentence of 6 months without the option of a fine. He avers that his continued incarceration hurts his well-being and that of his young family that depends on him. The applicant urged the court to vary the sentence imposed and grant him an alternative sentence of a fine. The application is unopposed by the respondent.
4. The power of this court in exercise of 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.”

5. Indeed, this court has jurisdiction to entertain an application for revision under Section 362-367 of the *Criminal Procedure Code*, Cap 75 Laws of Kenya.
6. In this instant case, I have considered the offence the applicant was convicted for and found that the sentence imposed by the trial court was lawful. However, it is noteworthy that the Chief Justice’s (CJ) memo on prison decongestion dated 7/12/2022 directed that the High Court may conduct sentence reviews for convicted prisoners who are either serving sentences of less than three (3) years or those serving longer sentences but have a balance of three (3) years and below to serve.
7. In view of the foregoing and in the spirit of prison decongestion, I find that the applicant is eligible for sentence review. I therefore exercise judicial discretion and hereby substitute the sentence of 6 months’ imprisonment imposed by the trial court with a fine of Kshs 100,000/=.
8. Orders accordingly.

RULING DATED DELIVERED VIRTUALLY THIS 6TH DAY OF JULY 2023.

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D. KAVEDZA

JUDGE

