



**Mutisya v Republic (Anti-corruption and Economic Crimes Miscellaneous 2 of 2023)
[2023] KEHC 20698 (KLR) (Anti-Corruption and Economic Crimes) (25 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 20698 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
ANTI-CORRUPTION AND ECONOMIC CRIMES
ANTI-CORRUPTION AND ECONOMIC CRIMES MISCELLANEOUS 2 OF 2023**

EN MAINA, J

JULY 25, 2023

BETWEEN

RODGERS MWOLOLO MUTISYA APPELLANT

AND

REPUBLIC RESPONDENT

(Being an application for revision against the Ruling of Hon. Felix Kombo Chief Magistrate delivered on 25th April, 2023, in Milimani Anti-Corruption Chief Magistrates' Court at Nairobi, ACC No 7 of 2020 Republic v Rodgers Mutisya Mwololo)

JUDGMENT

1. On 25th April 2023 the Applicant herein was convicted on two counts of the offence of Receiving a Bribe Contrary to Section 6(1) (a) as read with Section 18 of the *Bribery Act* and was sentenced to a fine of Kshs. 150,000/= on each count in default to serve 12 months imprisonment on each count.
2. Subsequently on 3rd July 2023 the Applicant filed a Notice of Motion dated 30th June 2023 seeking an order for revision of the sentences on the ground that he is a changed man and will never engage in criminal activities or be in conflict with the law.
3. In the Supporting Affidavit sworn on even date the Applicant deposes that he has a young family with school going children; that he is the sole bread winner of his extended family including his brother at the University of Nairobi; that this court should consider the time he has served since he was convicted; that he is a changed man and never will he engage himself in criminal activities or be in conflict with the law and further that it is in the interest of justice that his application be allowed so that he can reunite with his family and also attend to his elderly parents.



4. This being an application for revision as opposed to an appeal I saw no need to hear the parties and so did not invite the Republic, which is named herein as the Respondent, to respond to the application. (see Section 365 of the *Criminal Procedure Code*).
5. I have carefully considered this application. I have also called for the record of the proceedings of the lower court.
6. The High court exercises its power of revision under Section 364(l) (a) & (b) of the Criminal Procedure Code the relevant part of which provides: -

“ 364. Powers of High Court on revision

- (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”

7. Unlike in an appeal where the court is concerned with the merits, in a revision the court concerns 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 a subordinate court.
8. The case of *Joseph Nduvi Mbuvi v Republic* [2019] eKLR is a perfect rendition of the above position where Odunga J (as he then was) stated: -

“In my considered view, 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. Sentencing is in the discretion of the court. The offences for which the Applicant was convicted attract a punishment of a fine of not exceeding Kshs. 5 million or to imprisonment for a term not exceeding ten (10) years or both. The Applicant was sentenced to an aggregate of Kshs. 300,000/= on both counts or to imprisonment for a term of twenty-four (24) months.



10. It is trite that even on appeal an Appellate court will not ordinarily interfere with the exercise of a trial court's discretion (in this case sentencing) unless that court acted upon a wrong principle or overlooked some material factor. See the case of *Bernard Kimani Gacheru vs. Republic* [2002] eKLR: -

“It is now settled law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account some wrong material, or acted on a wrong principle. Even if, the Appellate Court feels that the sentence is heavy and that the Appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, anyone of the matters already states is shown to exist.”

11. I have perused the record of the trial court and noted that the Applicant was afforded an opportunity to mitigate before he was sentenced. I have also satisfied myself that the trial Magistrate considered the Applicant's plea in mitigation and that the court also took into account that the Applicant was a first offender and that he had been cooperative during the investigations. The Learned Trial Magistrate also took into account the nature and the circumstances of the offence and its effect to the public. The trial court therefore did not act upon a wrong principle or ignore a relevant factor and indeed the Applicant has not alluded to it.
12. The above being the case it would be erroneous for this court to interfere with the judicial discretion of the Learned Trial Magistrate to sentence. There is nothing incorrect about the sentence which in my view was in fact quite lenient given the nature of the offences committed. The sentence was well within the law and hence legal and there was no irregularity in the proceedings leading to the sentencing and as such I find no merit in this application and the same is therefore dismissed.
13. The above order to be certified to the Applicant and the Learned Trial Magistrate.

SIGNED, DATED AND DELIVERED ON THIS 25TH DAY OF JULY 2023.

E N MAINA

JUDGE

