Munene & another v Republic (Revision Case E53 & E56 of 2022 (Consolidated)) [2023] KEHC 20488 (KLR) (21 July 2023) (Ruling)

Neutral citation: [2023] KEHC 20488 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NYERI

REVISION CASE E53 & E56 OF 2022 (CONSOLIDATED)

LM NJUGUNA, J

JULY 21, 2023

BETWEEN

SAMUEL MWENDA MUNENE ..... 1ST APPLICANT

REEN SAMSON KORTOI ..... 2ND APPLICANT

AND

REPUBLIC ..... RESPONDENT

RULING

1. The applicants herein made applications vide letters dated October 31, 2022 and received in this court on December 9, 2022 and wherein they invited this court to invoke its supervisory jurisdiction over the subordinate court to revise the sentence meted on them by the trial court in Nyeri Chief Magistrate's Criminal Case No 947 of 2020- Republic v Samuel Mwenda Munene & Reen Samson Kortoi. They invoked section 362 and 364 of the *Criminal Procedure Code*. The reasons for the revision were contained in the said letters.

2. Directions were given that the two applications be consolidated and that the same be canvassed by way of written submissions. Each of the applicant filed his own submissions. However, from the perusal of the said submissions, both are rather similar and the applicants seem to be making their mitigation. In a nutshell both applicants submitted that they were first offenders and as such, a maximum sentence ought not to have been meted on them but a more lenient sentence. Reliance was placed on the case of *Otieno v R [1983] eKLR*. Further that they understood the consequences of their irresponsible behaviors and have learnt a lesson the hard way and as thus, a non-custodial sentence ought to be meted out for the remaining part of the prison term; that their respective young families which they left at home were suffering as they were sole bread winners; that each of them had an ailing child and which is making their respective families to struggle as a result of the applicants' imprisonment; that they are rehabilitated in line with the sentencing policy guidelines; that they are remorseful, and apologetic of their behaviours; and that they have been of exemplary amiable conduct with no discipline issues. They

thus invited this court to exercise its supervisory jurisdiction and in so doing revise the sentence meted on them and for the court to consider the mitigating factors herein and order that the time served is sufficient punishment and that they ought to be released to the community.

3. The respondent in opposition to the application submitted that the section of the law the applicants were charged with, provided for a sentence of not less than 5 years or a fine of not less than one million shillings or both. That the factors which ought to be considered in deciding whether or not to impose a non-custodial sentence is gravity of the offence, character of the offender and the criminal history of the offender amongst other factors. That looking at the seriousness of the offence, the respondents were opposed to a non-custodial sentence but the court ought to benefit from the social enquiry report before determining on the application since the applicants had submitted that they were first offenders and had young families.

4. I have considered the two applications and the rival submissions filed herein and it's my considered view that the issue for determination is whether the applicants have made out a case for revision of the orders of the trial court.

5. As I have noted, the applicants have invoked section 362 and 364 of the Criminal Procedure Code.

6. Section 362 of the Criminal Procedure Code (Cap 75) provides that: -

> ' 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'

7. This revisionary jurisdiction was explained by the English Court of Appeal in *REX v Compensation Appeal tribunal 1952 IKB 338 – 347* which was quoted with approval in *Prosecutor v Stephen Lesinko [2018] eKLR* that:-

> ' The court of Kings Bench has an inherent jurisdiction to control all inferior tribunals, not in an appellate capacity but in a supervisory capacity. This control tends not only to seeking that the inferior tribunals keep within their jurisdiction, but also to seeking that they observe the law.'
>
> The control is exercised by means of a power to quash any determination by the tribunal which, on the face of it offends against the law, when the kings Bench exercises its control over tribunals in this way, it is not usurping a jurisdiction which does not belong to it.
>
> It is only exercising a jurisdiction which it has always had.'

8. As such, it is clear that the purpose of revision under section 362 of the Criminal Procedure Code is for the 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. As the court held in *Republic v John Wambua Munyao & 3 others [2018] eKLR* (GV Odunga J as he then was), the revisionary jurisdiction 'should not be invoked so as to micro-manage the lower courts in the conduct and management of their proceedings for the simple reason that if every ruling of the Lower Court and which went against a party were to be subjected to the revisional jurisdiction of the Court, floodgates would be opened and the Court would be inundated with such applications thus making it practically impossible for the Lower Courts to proceed with any case to its logical conclusion.'

9. The jurisdiction is aimed at ensuring that subordinate courts keep within their jurisdiction and that they observe the law. As such, the question which needs to be answered is whether the trial court was correct, legal or proper when passing the sentence?

10. I have perused the trial court's record and what is clear is that the applicants herein were jointly charged with the offence of being in possession of wildlife trophy contrary to section 95(d) of the *Wildlife Conservation and Management Act* 2013. From the trial court's record, each of the applicants was sentenced to pay a fine of Kshs 1,000,000/- and in default to serve five years' imprisonment. Section 95(d) of the Act provides for imprisonment for a term of 5 years or payment of a fine of Kshs 1,000,000/ or both.

11. Considering the above, it is my view that the sentence meted upon the applicants was within the law (legal), correct and proper. The applicants did not submit or rather address the court as to how the same was illegal, incorrect and/ or improper. What the applicants seem to be doing was just but to mitigate. In my considered view, in invoking the jurisdiction under section 364 of the Criminal Procedure Code, this court cannot entertain mitigation from the parties. The issues raised in the application ought to have been raised during mitigation in the trial court. The grounds upon which this court can review a sentence are statutory and do not include the grounds as relied on, by the applicant.

12. Considering all the above, I find that the applications for review of the sentence as consolidated lacks merits and the same are hereby dismissed.

13. It's so ordered.

DELIVERED, DATED AND SIGNED AT NYERI THIS 21ST DAY OF JULY, 2023.

L. NJUGUNA

JUDGE

.....for the 1st Applicant

.....for the 2nd Applicant

.....Respondent