



**Njoroge v Republic (Criminal Miscellaneous Application E088 of 2022)
[2023] KEHC 22494 (KLR) (22 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 22494 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CRIMINAL MISCELLANEOUS APPLICATION E088 OF 2022**

**FR OLEL, J
SEPTEMBER 22, 2023**

BETWEEN

MARY MUTHONI NJOROGE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

A. Introduction

1. The applicant was charged and convicted of the offence of handling stolen property in Naivasha CMCR No 820 of 2018 and was sentenced on September 19, 2022 to serve a prison term of five (5) years. The applicant subsequently filed this petition seeking to have the sentenced reviewed and she be allowed to spend the remainder of sentence period placed under community service order. (C.S.O) as she was suffering from chronic illness and was a mother of two school going children and thus the court should consider reducing her sentence.
2. The respondent did not file any Response to the said application.

B. Analysis of Law

3. I have considered the application by the applicant. Upon receipt of the request for revision of sentence, this court directed that a Probation Officer's report be filed on the convict for consideration by the Court. The probation department did file their report on dated 16.02. 2023, which made a positive recommendation that the sentence be reviewed and she be given a rehabilitative sentence under individual supervision and treatment plan.



4. The powers of the High court in revision are contained in section 362 through to 366 of the [Criminal Procedure Code](#) (cap.75). Section 362 specifically provides 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”.

5. In the case of [Joseph Nduvi Mbuvi V Republic](#) [2019] e KLR, Justice Odunga correctly set out the powers of the High court on revision as follows: -

“5. In my view, the revisionary jurisdiction of the High Court should only be invoked where there are glaring acts or omissions but should not be a substitute for an appeal. In other words, parties should not argue an appeal under the guise of a revision. It is for this reason that the decision whether or not to hear the parties or their advocates is discretionary save for where the orders intended to be made will prejudice the accused person.

6. As was stated by the High Court of Malaysia in *Public Prosecutor Vs Mubari Bin Mohd Jani And Another* [1996] 4 LRC 728 At 734, 735:-

“The powers of the High Court in revision are amply provided under section 325 of the [Criminal Procedure Code](#) subject only to subsections (ii) and (iii) thereof. The object of revisionary powers of the High Court is to confer upon the High Court a kind of “paternal or supervisory jurisdiction” in order to correct or prevent a miscarriage of justice. In a revision the main question to be considered is whether substantial justice has been done or will be done and whether any order made by the lower court should be interfered with in the interest of justice.....If we have been entrusted with the responsibility of a wide discretion, we should be the last to attempt to fetter that discretion...This discretion, like all other judicial discretions ought, as far as practicable, to be left untrammelled and free, so as to be fairly exercised according to the exigencies of each case”.

7. It is therefore clear that those powers are limited to what the statute and [the constitution](#) of Kenya under article 165(6) and (7) provides. What this court is called upon to determine is the legality, correctness or propriety of the sentence given by the court on the applicant’s application or petition for resentencing. In order to exercise that power, the court must be satisfied that the trial court acted upon wrong principles or failed to consider some fundamental principles. From the material placed before me, the applicants only complaint is that she should be placed on community service order as she was unwell and had two school going children, who depend on her for support. There is no illegality shown to have been committed by the court while sentencing the applicant.

8. Being alive to the fact that sentencing remains a function of the trial court and/or where the sentence passed under section 322(1), (2) did not infringe on the courts sentencing discretion, this court is bereft of jurisdiction to grant the orders as sought. The Power of Mercy Advisory committee is best placed to deal with the applicant’s case.

9. I am thus unable to find fault with the trial courts determination. From the record it is clear that trial court took into account the mitigation of the applicant and the circumstances of the offence. It is not the duty of this court while exercising its revision jurisdiction to substitute its decision for that of the trial court; see [George Aladwa Omwera Vs Republic](#) [2016] eKLR.



Determination

10. In the final analysis I find no merit in the application for resentencing and hereby dismiss the same.
11. The applicant is advised to seek for review of her sentence before the Power of Mercy Advisory committee
12. It is so ordered.

RULING WRITTEN, DATED AND SIGNED AT MACHAKOS THIS 22ND DAY OF SEPTEMBER, 2023.

FRANCIS RAYOLA OLEL

JUDGE

Delivered on the virtual platform, Teams this 22nd day of September, 2023.

