



**Kuria v Republic (Criminal Revision E040 of 2024)
[2024] KEHC 13731 (KLR) (6 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 13731 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KILGORIS
CRIMINAL REVISION E040 OF 2024
F GIKONYO, J
NOVEMBER 6, 2024**

BETWEEN

PETER MWANGI KURIA APPLICANT

AND

REPUBLIC RESPONDENT

*(Revision of Sentence imposed by Hon. M.I.G. Moranga
(SPM) on 08/08/2023 in Kilgoris SPMCR No. E034 of 2022)*

JUDGMENT

Sentence review

1. The applicant has applied to the High court in an application dated 04/08/2024 for review of the sentence of 20 years imprisonment to a non-custodial sentence or a suspended sentence, and to consider in the new sentence the time spent in custody.

Brief background of this case

2. The applicant was charged, convicted, and sentenced to 20 years imprisonment for the offence of trafficking in narcotic drugs contrary to section 4(a) of the Narcotic and Psychotropic Substances Control Act in Kilgoris SPMCR No. E034 of 2022.
3. The application is based on the grounds that the applicant is 66 years old and sickly. He suffers from prostrate hypertrophy (BPH), acute cystitis, and kidney disease which necessitates strict and intensive monitoring to mitigate potential adverse outcomes. Additionally, he suffers general body numbness, difficulty in passing urine, and has blurred vision which puts him at risk of losing his eyesight having undergone surgery in his right eye at Kenyatta National Hospital. Therefore, the applicant is forced to overburden his fellow inmates and police wardens owing to his constant special needs. It is applicant's



view that, his health is deteriorating and he is advanced age; increasing his vulnerability to fatality from health conditions.

4. The applicant also faulted the trial court for not considering the years the applicant spent in custody during the pendency of the hearing and determination of the matter before it.
5. Mr. Danstan counsel for the applicant intimated to the court that the applicant had withdrawn his client's filed earlier.
6. Mr. Isaboke- prosecution counsel stated that the prosecution did not intend to oppose the application for review as it is based on illness and age. The applicant is also complaining that the trial court did not consider time spent in custody.

Analysis And Determination

7. The applicant has approached the court, inter alia, under article 50 of *the Constitution* of Kenya which provides, amongst others, for the right to apply for review as follows: -

(2) Every accused person has the right to a fair trial, which includes the right-

(q)if convicted, to appeal to, or to apply for review by a higher court as prescribed by law. (emphasis mine)

8. The applicant had simultaneously employed both the appellate and revision jurisdictions of the court about which the court observed that: -

The court also notes that the applicant herein has also filed Kilgoris HCCRA No. 023 of 2024 on same decision. Propriety of engaging both jurisdictions of revision and appeal will have to be contended with by the application.

9. The applicant subsequently withdrew the said appeal in favor of the revision application.

Issue

10. Be that as it may, the court called for the record of the trial court for purposes of article 165(7) of *the Constitution*.

11. Is review of sentence merited?

Context: Legal

12. Under Article 165(6) of *the Constitution*: -

(6). 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.

13. And, under article 165(7) of *the Constitution*: -

(7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.

14. Under section 362 of the Criminal Procedure Code: -

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.



15. Section 364 of the Criminal Procedure Code outlines the powers of the High Court in revision application as follows: -

364. Powers of the 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.
2. No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence:

Provided that this subsection shall not apply to an order made where a subordinate court has failed to pass a sentence which it was required to pass under the written law creating the offence concerned.
3. Where the sentence dealt with under this section has been passed by a subordinate court, the High Court shall not inflict a greater punishment for the offence which in the opinion of the High Court the accused has committed that might have been inflicted by the court which imposed the sentence.
4. Nothing in this section shall be deemed to authorize the High Court to convert a finding of acquittal into one of conviction.
5. When an appeal lies from a finding a sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed.

16. *The Constitution* sets the outer limits where the High Court calls for the record of any proceedings before any subordinate court or person, body or authority; ‘may make any order or give any direction it considers appropriate to ensure the fair administration of justice’. Article 165(7) of *the Constitution*. The court in a revision application checks, inter alia, for the correctness, legality, and propriety of the orders made or proceedings undertaken by the trial court. S.362 of CPC.

Applying the test...

17. The applicant was charged together with another with the offence of trafficking in narcotic drugs contrary to section 4(a) of the narcotic and psychotropic substance.
18. The particulars of the offence were that on 19/01/2022 along Kehancha- Lolgorian road in Trasmara south sub-county within Narok county they were jointly conveying in narcotic drugs namely cannabis sativa(bhang) to wit 313kgs with a street value of Kshs. 9,390,000/= in a motor vehicle registration number KDC 125X Toyota Prado in contravention of the said Act.
19. Section 4 of the *Narcotic Drugs and Psychotropic Substances (Control) Act* No. 4 of 1994 provides for stiff the penalties for trafficking in narcotics drugs in line with the purpose of the Act to combat these offences.



20. This court has perused the record of the lower court. The sentence is prescribed in law. The sentence was imposed with full sanction of law, and is within the prescribed penalty, and, therefore legal.
21. The record shows that the trial court considered the mitigation, the seriousness of the offence as well as the fact that the applicant was serving 25 years at Kamiti maximum prison for a similar offence and conviction from JKIA law courts.
22. The trial court noted the serious consequences of the offence to the consumers and society at large and how rampant the offence is in the region. The trial court also considered the time spent in custody by the applicant, his failing health, and his age.
23. The applicant argued that his health has deteriorated due to sickness and advanced age requiring constant medical attention and intensive care; and asked the court to set aside the custodial sentence and impose a non-custodial sentence.
24. He claimed that his condition has made him entirely dependent on his inmates and police warders thereby burdening them with constant pleas for assistance.
25. The court notes that, prison authorities are required to offer any accommodations and facilitations that an inmate may require due to such limitations emanating from failing health. There is nothing to show that he is not offered appropriate accommodations and facilitations. Merely feeling that he is a burden to other inmates and police warders is insufficient to found a review of sentence.
26. There is also no proof that the conditions he is suffering from will not be handled effectively through the prison health protocols which also tap into government hospitals of repute and competencies like Kenyatta Hospital and level five hospitals in all counties.
27. It is curious to note that the report provided by the medical facility was prepared on 24th February, 2022 and it confirms that he has been their patient. The appellant committed and was arrested for the offence on 19th January 2022. It appears he was about 64 years when he committed the offence and with failing health. One only wonders why he did not think about his advanced age and failing health before the commission of the offence of trafficking in narcotic drugs which is heinous crime and associated with causing havoc to the lives of the consumers and the society at large.
28. Given the facts and circumstances of the case- the offence is serious with serious ramifications on the consumers and the society, the amount of narcotic drugs trafficked, notoriety of the offence in this jurisdiction, the need to destroy the supply of these narcotics drug, he is a repeat offender and serving a jail term for similar offense, the stiff penalties prescribed- the sentence imposed was very lenient for the offence the applicant was convicted.
29. There is nothing on facts or law, to warrant this court to interfere with the sentence.

Conclusion and orders

30. The sentence imposed on the appellant, is sound and founded in good reason, law and facts of the case, notwithstanding the eloquent submissions by the defense counsel which may evoke sentimental flavor and sympathies.
31. The court does not find any incorrectness, Illegality, or impropriety or inappropriateness of the sentence imposed by the trial court.
32. This court therefore finds no reason to interfere with the sentence.
33. The application lacks merits and is dismissed



DATED, SIGNED, AND DELIVERED AT KILGORIS THROUGH MICROSOFT TEAMS
ONLINE APPLICATION THIS ...6THDAY OF ...NOVEMBER., 2024.

F. GIKONYO M.

JUDGE

In the Presence of:

1. Court Assistant - Nyangaresi
2. M/s. Nekesa/Omari for Applicant – present
3. Applicant – present
4. Mr. Okeyo for DPP - Present

