



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

CRIMINAL REVISION NO. 131 OF 2020

JEREMIAH MURIITHI NJERU.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The applicant herein has moved this court vide an application dated 6/10/2020 wherein he seeks review of sentence imposed by the trial court in Siakago PM's Criminal Case No. 451 of 2020 and the sentence be substituted with a non-custodial sentence. It is his case that he was convicted by the trial court for the offences of handling stolen property contrary to section 322(2) of the Penal Code in count one and stealing by servant contrary to Section 281 of the Penal Code in count 2 and sentenced to 18 months imprisonment in both counts on 21/07/2020. The basis for the review was stated on the said application.

2. The application proceeded orally during which, the applicant submitted that he took the items to settle a debt owed by his employer (complainant) and he informed him of the same expecting the said employer to settle the said debt but he instead had him arrested. Further that he was remorseful and had sought forgiveness from the complainant. He further deposed that he is disabled and thus a burden to the other inmates; that he has a young family and that at the time of the arrest he had taken a loan with the bank. He thus prayed for a non-custodial sentence.

3. The application was opposed by Ms. Mati Learned State Counsel who submitted that for the applicant to bring such an application, he ought to prove that the sentence was illegal, incorrect or manifestly excessive for the court to review the same. That, from the nature of the offence the applicant was charged with, the sentence meted was lenient. Further that the applicant ought to prove the nature of the disability. The applicant in a rejoinder reiterated that he seeks for leniency and for non-custodial sentence.

4. I have considered the application and the oral submissions made by the parties before the court and it's my considered view that the issue for determination is whether the same is merited.

5. Section 362 of the Criminal Procedure Code (Cap.75) bestows on this court revisionary jurisdiction. The said section 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"

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

"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."

7. 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. This 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.

8. From the perusal of the trial court's record, it is clear that the applicant herein was charged with the offence of stealing by servant contrary to Section 281 of the Penal Code and in alternative handling stolen property contrary to section 322(2) of the Penal Code. The record further indicates that the applicant pleaded guilty to the main count and the court sentenced him to 18 months' imprisonment. Section 281 of the Penal Code under which the applicant was sentenced provides for a sentence of seven (7) years for the offence.

9. It is my view that the sentence meted upon the applicant was within the law (legal), correct and proper. The issues raised in the application ought to have been raised during the mitigation in the trial court. The grounds upon which this court can review a sentence are statutory and do not include the grounds relied on by the applicant.

10. I note that under Section 364 of the Criminal Procedure Code, this court can revise and exercise the revisionary jurisdiction *suo moto*. However, it is my view that the same can only be within the parameters set out in Section 362. Even if the court were to invoke the said jurisdiction and proceed *suo moto*, there is nothing from the court record indicating that the sentence was incorrect, illegal or improper and/or the proceedings are irregular. The process of plea taking was regular and in compliance with the law and the principles in Adan -vs- Republic [1973] EA LR 445. Considering all the above, the application herein is unmerited and the same is hereby dismissed.

11. It is so ordered.

Delivered, dated and signed at Embu this 3rd day of March, 2021.

L. NJUGUNA

JUDGE

.....**for the Applicant**

.....**for the Respondent**