



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MIGORI

PETITION NO. E 001 OF 2020

MICHAEL SAGON KEGOCHA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

This Petition was filed by **Michael Sagon Kegocho** who was convicted for the offence of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code, by Hon. Mesa PM, Kehancha Court, on 11/12/2018 after he pleaded guilty to the offence.

The particulars of the charge were that on 11/12/2018, at Komasincha village in Kuria West, Sub County, unlawfully killed **Jackson Igenga Ngocho**. He was sentenced to serve a period of ten years imprisonment. He filed this petition alleging contravention of his rights to mitigation and hence fair trial under Article 50 (2) of the Constitution and that his right to representation was also violated. The petitioner also seeks this court's mercy to review his sentence of ten (10) years on humanitarian grounds.

Though it was indicated that the petitioner filed submissions, I have not seen any on the file.

Mr. Kimanathi of ODPP filed his submissions in which he urged that the appellant having pleaded guilty to the offence, has no right of appeal under Section 348 of the Criminal Procedure Code as the Petitioner has not demonstrated that the plea was equivocal; that the petitioner admits that he has not filed any appeal; that the maximum sentence for the offence of manslaughter is life imprisonment and the petitioner was only sentenced to ten (10) years imprisonment which is very lenient.

As regards the court's powers of revision under Section 364 of the Criminal Procedure Code, counsel urged that the said provision must be exercised in accordance with Sections 354, 357 and 358 of the Criminal Procedure Code; that the appellant should have filed an appeal since he is challenging the extent and legality of the sentence.

I agree with the learned counsel for the State that this is not an appeal. Section 348 of the Criminal Procedure Code bars filing of an appeal where one pleads guilty except where he demonstrates that the plea was equivocal or challenges the extent or legality of the sentence. In this case, Petitioner had only sought review of the sentence apart from alleging breach of his Constitutional rights. It is the petitioner's contention that his rights under Article 50(2) of the Constitution were breached in that he was not given a chance to mitigate. I have looked at the proceedings in the lower court and clearly, he was allowed to mitigate and that ground has no basis.

He also alleged that he was not accorded free services of counsel like accused persons in murder cases nor was he advised to get one and hence his right under Article 50 (2) (g) were infringed. These are issues that should have been raised in an appeal, not revision.

Section 364 Criminal Procedure Code provides for the revisionary jurisdiction of the High Court where it considers revision of judgements/rulings of subordinate courts. Section 364(5) CPC provides as follows: -

“When an appeal lies from a finding, 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.”

The court considered the powers of revision in **Joseph Nduvi Mbuvi vs Republic (2019) eKLR** the court held as follows:

“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.”

In **Republic v Anthony Thuo Karimi [2016] eKLR** the court held:-

“The basic object behind the powers of revision is to empower the high court to exercise the powers of an appellate court to prevent failure of justice in cases where the code does not provide for appeal. The power however is to be exercised only in exceptional cases where there has been a miscarriage of justice owing to: - a defect in the procedure or a manifest error on the point of law, excess of jurisdiction, abuse of power, where decision upon which the trial court relied has since been reversed or overruled when the revision appeal is being heard.

The revisional powers though are quite wide, have been circumscribed by certain limitations. Such as (a) in such cases where an appeal lies but there is no appeal brought in, originally no proceeding by way of revision shall be entertained at the instance of the party who would have appealed.[6] (b) The revisional powers are not exercisable in relation to any interlocutory order passed in any appeal, inquiry and trial. (c) The court exercising revisional powers is not authorized to convert a finding of acquittal into one of conviction. [7]” (emphasis mine).

Guided by the above decisions, revision should not be a substitute for an appeal.

It seems that the petitioner either wanted a short cut to an appeal because in the end, he was requesting that the court reduces his sentence. In my view, the petitioner should have come in the proper manner, by way of an appeal to challenge the trial, conviction, the extent and legality of his sentence which he failed to do. The court could not sufficiently deal with an appeal camouflaged as an application for revision under Section 364 of the Criminal Procedure Code.

Revision power are exercised where there is evidence that there was miscarriage of justice, error on a point of law, excess of jurisdiction or abuse of power.

If the petitioner was seeking revision under Section 364 of the Criminal Procedure Code, I find no good grounds to interfere with the sentence. The maximum sentence for an offence of manslaughter is life imprisonment. He was

only sentenced to ten (10) years imprisonment which is lenient. In the circumstances, the sentence is legal and was fairly lenient having considered that the petitioner pleaded guilty to the offence, was a first offender and mitigation.

In the end, I find that the Petition lacks merit and is hereby dismissed.

DATED, SIGNED and DELIVERED at MIGORI this 16th day of June, 2021

R. WENDOH

JUDGE

Judgment delivered in the presence of

Michael Sagon Kegocha Petitioner in person present.

Mr. Kimanthi for the Republic.

Nyauke Court Assistant.