



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT SIAYA

MISC. CRIMINAL APPLICATION NO. E102 OF 2021

CORAM: HON. R.E. ABURILL J

CAROLINE MAKUNGU.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an Application for Sentence Review against sentence in

Siaya Principal Magistrate's Court in Cr. Case No. 853 of 2015 dated 18.08.2017

by Hon. J.O. Ong'ondo, Principal Magistrate AND Siaya High Court

Criminal Revision No. 67 of 2020 on 24.07.2020)

RULING

1. The Applicant is a convict in Siaya PM's court Cr. Case No. 853 of 2015 of the offence of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code. She was convicted and sentenced on 18th August, 2017 to serve seven years imprisonment.
2. There is no indication whether she has appealed. She has applied to this court for this court to make an order that the trial court should have taken into account the period spent in prison remand custody, in sentencing her, as stipulated in Section 333(2) of the Criminal Procedure Code.
3. I have examined the committal warrant issued on 18/8/2017. The convict was sentenced to serve seven (7) years imprisonment. The applicant claims that, she was in prison custody for a period of two years prior to her conviction and sentence. She therefore prays that the period spent in custody during her trial be taken into account as part of her sentence served so that she serves the least severe sentence as espoused in Article 50(2)(p) of the Constitution and Section 333(2) of the Criminal Procedure Code.
4. I have considered the application and called for Siaya PM Cr. Case No. 853 of 2015 Republic Vs Carolyne Makungu Imende.
5. From the said trial court record, it is clear that the applicant/convict was convicted of the offence of Manslaughter. During her trial, she was released on cash bail of Kshs. 40,000/= which was released to her advocate Ojuro & Co. Advocates vide payment voucher of 6th June 2018.
6. Furthermore, this same convict had filed an application before this court for sentence revision vide Siaya HCR Revision No. 67/2020 which application was dismissed on 24th July 2020 (copy attached hereto).
7. What more does the convict want other than to display her dishonesty and lay bare her criminal record and tendencies. She wants to escape justice in a dishonest manner. She violently strangled the deceased who was her sickly husband and hit him with a blunt object until the deceased died a very painful death. There was no material on record to show any form of provocation. She was given very light sentence considering her conduct prior and during the trial. Had the prosecution applied to enhance sentence, this is a case where the court would not have hesitated to enhance sentence against a cold-blooded killer. She is lucky that she escaped the more serious charge of Murder. She now wants to take advantage of the time lapse since July 2020 when this court declined her application for sentence revision and blatantly lie to this court that she was in prison custody for 2 years prior to her sentencing yet she was released on bond. Furthermore, the applicant cannot be allowed to litigate her grievances by installments.

8. When she came to court for sentence revision, High Court Revision No. 67/2020, what prevented her from seeking to invoke Section 333(2) of the Criminal Procedure Code? The answer lies in her dishonesty.
9. The trial court record is crystal clear that on 7/12/2015 when the convict was first arraigned, she took a plea of not guilty and was given an automatic bond of Kshs. 500,000/= with one Surety of similar amount. The bond terms above were later reviewed on her own application on 25/1/2016 and therefore she was in prison custody only awaiting her fulfilment of the bond terms granted by the trial court.
10. For all the above reasons, I find the application by the convict Carolyn Makungu Imende mischievous and an abuse of court process.
11. The same is hereby dismissed.
12. File closed.
13. Orders accordingly.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 22ND DAY OF SEPTEMBER 2021.

R.E. ABURILI

JUDGE