



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CRIMINAL REVISION NO. E107 OF 2021**

**CECILY MURUGI NGOROI.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. In her undated application filed on 25<sup>th</sup> May, 2021, the applicant, *Cecily Murugi Ngoroi* sought sentence review and specifically prayed for substitution of the custodial sentence imposed on her by the Makadara Chief Magistrate's Court in Criminal Case No. 343 of 2020 with a non custodial sentence.

2. In her supporting affidavit, the applicant deposed that she was tried and convicted of the offence of assault contrary to *Section 251* of the *Penal Code* subsequent to which she was sentenced to serve three years imprisonment; that she is now remorseful and reformed having benefitted from guidance and counselling in prison. She urged the court to note that she was a first offender and a single parent of two children aged 14 and 12 years respectively and that she deserves a second chance to be with her family.

3. At the hearing, the applicant and the respondent through learned prosecuting counsel *Ms Kimaru* chose to prosecute the application by way of oral submissions. In her submissions, the applicant reiterated her prayer for substitution of her sentence and expounded on the depositions in her supporting affidavit. She added that she was remorseful and that allowing the application would give her an opportunity to ensure that her children received a good education.

4. The application is opposed. *Ms Kimaru* submitted that the application was devoid of merit and should be dismissed on grounds that the victim of the offence was a minor who was and is still traumatized by the applicant's actions as shown in the sentence review report filed on 10<sup>th</sup> June, 2021; that the applicant does not deserve any sympathy since she destroyed the life of a child she was employed to take care of; that the mitigating factors in this case do not outweigh the aggravating factors.

5. I have considered the application as well as the oral submissions made by both the applicant and the respondent. I find that though it is not explicitly stated in the application, the application invokes the revisional jurisdiction of this court which empowers the court, in appropriate cases, to review and vary any orders, decision or sentence passed by the trial court. *Section 362* of the *Criminal Procedure Code* expressly limits the revisional jurisdiction of this court by providing 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.”***

6. It is clear from the above provision that the court can only revise or interfere with an order or sentence passed by the trial court if it was satisfied that there was an illegality, error, or irregularity in the proceedings that gave rise to the challenged order or sentence.

7. In this case, the applicant has not claimed that the sentence meted on her by the trial court was illegal or that there was any irregularity in the proceedings that led to her conviction and sentence. The applicant has not also complained that the sentence was either harsh or manifestly excessive. She has premised her application on grounds that she was a first offender; that she is now reformed and deserves a second chance to reunite with her children to facilitate their education.

8. It must be remembered that sentencing is at the discretion of the trial court. The offence subject of the applicant's conviction attracts a penalty of a maximum of five years imprisonment. The applicant was sentenced to three years imprisonment. In this case, there is nothing to show that the impugned sentence was illegal or that there was any impropriety in the proceedings before the trial court.

9. I am also not satisfied that the sentence was either harsh or manifestly excessive as to require this court's intervention by way of revision considering the age of the victim and the circumstances in which the offence was committed particularly the fact that the applicant, being the child's caregiver decided to hurt the child instead of giving the child the care and protection she was expected to provide to the child. In my view, the sentence was reasonable and deserved.

10. There is another reason why this application must fail. Under *Section 364 (5) of the Criminal Procedure Code*, this court is prohibited from entertaining an application for revision at the instance of a party like the applicant who could have appealed against the impugned decision. If the applicant was aggrieved by her sentence, she ought to have filed an appeal instead of filing the instant application for revision.

11. In view of the foregoing, I find that the application has failed to meet the threshold of this court's revisional jurisdiction. It is consequently dismissed for lack of merit.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 6TH DAY OF OCTOBER 2021.**

**C. W. GITHUA**

**JUDGE**

**In the presence of:**

Applicant in person

Ms Chege for the respondent

Ms Karwitha: Court Assistant