



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

CRIMINAL REVISION NO. E091 OF 2021

CORAM: R.E. ABURILL, J

GEORGE OTIENO OBARE.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an Application for sentence revision from Ukwala Principal Magistrates' Court in Criminal Case No. 611 of 2019 by Hon. C.I. Agutu, Senior Resident Magistrate on 27/9/2021)

RULING

1. The applicant herein George Otieno Obare seeks for revision of sentence imposed by Ukwala SRM Hon. C.I. Agutu in ***Ukwala SRM Cr. Case No. 611/2019*** where he was convicted and sentenced to pay a fine of Kshs. 100,000/= in default to serve one year imprisonment for the offence of intermeddling with the Estate of the deceased person contrary to ***Section 45(1) as read with Section 45(2) of the Law of Succession Act, Cap 160 of Laws of Kenya.***
2. The grounds upon which the sentence revision is premised is that the sentence imposed is illegal as the maximum provided for under the penalty Section is a fine of Kshs. 10,000 and not one hundred thousand as imposed by the trial court.
3. I have perused the charge sheet, proceedings and judgment and sentence of the lower court.
4. This applicant filed ***HCRA E024/2021*** out of time which appeal was struck out on 3/11/2021 that is when he filed this application.
5. ***Section 45(1) of the Law of Succession Act*** provides for protection of the property of a deceased person. It prohibits intermeddling with property of the deceased person and states:
 1. ***Except so far as expressly authorized by this Act, or any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose off, or otherwise intermeddle with, any free property of a deceased person.***
 2. ***Any person who contravenes the provisions of this section shall:***
 - (a) ***be guilty of an offence and be liable to a fine not exceeding ten thousand or to a term of imprisonment not exceeding one or to both such fine and imprisonment and***
 - (b) ***be answerable to the rightful executor or administrator to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.***
6. From the above clear provisions of the law, no court can impose a sentence that is higher than the maximum provided. The maximum fine set by the law is ten thousand Kenya shillings and not One Hundred Thousand shillings.
7. The trial magistrate upon convicting the applicant herein imposed on him a fine of Kshs. 100,000/= One hundred Thousand only and in default to serve one year imprisonment. Whereas the one year imprisonment is lawful though the very maximum provided for in law, which also provides for both a fine and prison term, the fine of Kshs. 100,000/= imposed was illegal.
8. For the above reasons, I find this application merited. I revise the illegal fine imposed and set it aside and substitute it with a fine of Kshs. 10,000/= (ten thousand Kenya shillings) and in default, the applicant to serve one year imprisonment.

9. The revision order to be served on Prisons and the trial Magistrate, Hon. C.I. Agutu, Senior Resident Magistrate, Ukwala Law Courts.

10. File closed.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 3RD DAY OF DECEMBER, 2021

R.E. ABURILI

JUDGE