



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL REVISION NO. E315 OF 2021

HASSAN ARERO KENO.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The applicant, *Hassan Arero Keno* approached this court through an undated chambers summons application filed on 30th July 2021. He sought sentence review in respect of the sentence imposed on him by the lower court in Kibera Case No. 317 of 2017. In that case, the applicant was convicted of the offence of attempted defilement contrary to *section 9 (1)* as read with *sub section (2)* of the *Sexual Offences Act of 2006*. He was sentenced to serve 10 years imprisonment.

2. In the grounds advanced in support of the application, the applicant averred that he was a first offender; that he was remorseful and that this court should review his sentence to factor in the time he had spent in remand during the trial.

3. At the hearing, both the applicant and the respondent chose to prosecute the application by way of oral submissions. In his submissions, the applicant basically reiterated the grounds premising his application only adding that in sentencing him, the trial court erred by failing to consider the time he had spent in remand.

4. In opposing the application, learned prosecuting counsel *Mr. Kiragu* submitted that the application lacked merit and ought to be dismissed as the trial court had considered the time the applicant had spent in custody prior to his conviction and sentence.

5. Having considered the application, I find that it invokes the revisional jurisdiction of this court which is donated by *Section 362* as read with *Section 364* of the *Criminal Procedure Code*.

Section 362 of the *Criminal Procedure Code* empowers this court to revise any order or sentence passed by the lower court if it was satisfied that the order or sentence was made in error and was illegal or was a product of some mistake, impropriety or irregularity.

6. In this case, the trial court's pre-sentence notes show clearly that in sentencing the applicant to ten years imprisonment, the learned trial magistrate considered the applicant's mitigation and the period he had spent in lawful custody. It is worth noting that ten years imprisonment is the minimum sentence prescribed by the law for the offence subject of the applicant's conviction.

7. In view of the foregoing, the applicant's complaint that the learned trial magistrate erred by failing to take into account the period he was in lawful custody as required by *Section 333 (2)* of the *Criminal Procedure Code* lacks foundation and cannot be sustained. The other grounds advanced by the applicant in support of the application fall outside the ambit of the court's revisional jurisdiction and can only be entertained by this court sitting as an appellate court.

8. The application looked at in its totality points to a challenge against the sentence imposed by the trial court and since the applicant had a right of appeal, he ought to have filed an appeal against his sentence instead of filing the instant application. In fact, under *Section 364 (5)* of the *Criminal Procedure Code*, the court is prohibited from entertaining an application for revision of a sentence, finding or order at the instance of a party who could have appealed.

9. I believe I have said enough to demonstrate that the application lacks merit and it is accordingly dismissed.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 9TH DAY OF DECEMBER 2021.

C. W. GITHUA

JUDGE

In the presence of:

The Applicant

Mr. Mutuma for the respondent

Ms Karwitha: Court Assistant