



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**MILIMANI LAW COURTS**

**CRIMINAL REVISION NO. 297 OF 2019**

**KEVIN MURIITHI NTINDA.....APPLICANT**

**VERSUS**

**REPUBLIC.....PROSECUTOR**

**RULING**

1. By an undated **Chambers Summons** application filed in court on **13<sup>th</sup> November, 2019**, the Applicant seeks that the court reviews the sentence of seven years meted against him on **24<sup>th</sup> July, 2019** following his conviction in **Criminal Case No.4324 of 2013** by reducing the same.
2. The application is supported by an Affidavit sworn by the Applicant and annexed thereto wherein he has deponed that he was charged, tried, convicted and sentenced to serve Seven (7) years imprisonment for the offence of Robbery with Violence. He says that he is remorseful for the offence as he was a first offender. He also says he is the sole bread winner of his family and prays for a non-custodial sentence.
3. At the hearing, both parties canvassed the application through oral submissions.
4. In his submissions, the Applicant submitted that he was a Military Officer and he regrets getting himself on the wrong side of the law considering his mandate and oath of service. He submitted that before his conviction, he was paying fees for his younger brother and niece but this has been affected since he lost his job when he was imprisoned. That, for the period he has been incarcerated, the Applicant states that he has changed his life around by undergoing bible studies which will enable him spread the gospel upon his release. The applicant has prayed for the court's leniency and promises to be a campaigner against crime in the society when he is released. Further, he stated that he has served 2 years and 3 months in prison during which period he has learnt a lot from the hardships he has experienced.
5. The Respondent through the Learned Prosecuting Counsel, **Mr. Chebii** opposed the application. He submitted that the case against the Applicant was proved beyond reasonable doubt and that the Applicant has not demonstrated any reasonable cause to have the sentence that was meted against him reviewed. He has urged that the sentence be maintained.
6. I have considered the application alongside the submissions for and against it and I find that the application seeks to invoke the exercise of the supervisory jurisdiction of the High Court in criminal cases as provided for in **Section 362 to 366**, all of the **Criminal Procedure Code**. **Section 362** provides that:-

***“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”.***

7. Further, **Section 364** of the **Criminal Procedure Code** states that:-

***“(1) In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may—***

***(a) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 354, 357 and 358, and may enhance the sentence;***

*(b) in the case of any other order other than an order of acquittal, alter or reverse the order.*

*(2) No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence: Provided that this subsection shall not apply to an order made where a subordinate court has failed to pass a sentence which it was required to pass under the written law creating the offence concerned.*

*(3) Where the sentence dealt with under this section has been passed by a subordinate court, the High Court shall not inflict a greater punishment for the offence which in the opinion of the High Court the accused has committed than might have been inflicted by the court which imposed the sentence.*

*(4) Nothing in this section shall be deemed to authorize the High Court to convert a finding of acquittal into one of conviction.*

*(5) 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.*

8. Thus, a sentence will be revised by the High Court in relation to its correctness, legality or propriety and the regularity of any proceedings of any subordinate court leading to the said sentence.

9. In the instant case, the Applicant has not claimed that the sentence of Seven (7) years that was meted against him by the trial court was illegal, incorrect or that there was any irregularity or impropriety in the proceedings that led to his conviction and sentence. Further, he has not complained that the sentence was either harsh or manifestly excessive. All he seeks is for the sentence to be reviewed to a non-custodial sentence.

10. It must be remembered that sentencing is at the discretion of the trial court and some of the considerations a court takes into account when passing sentence is the nature and gravity of the offence and the impact the offence has on the victim and society at large.

11. It is worth noting that the offence subject of the Applicant's conviction attracts a penalty of death. In this case, The Applicant was sentenced to Seven (7) years imprisonment.

12. I have read through the proceedings and considered the law with regard to the offence the Applicant was charged with. I find nothing to show any irregularity or impropriety in the proceedings before the trial court. I also find that the sentence was neither incorrect nor illegal. Furthermore, for the Applicant to have been sentenced to serve Seven (7) years imprisonment for an offence that attracts a death penalty, it is my finding that even if the trial court did not expressly state that it considered the period served in remand during trial, the trial court must have had consideration of such factors as the sentence is too lenient in view of the prescribed penalty for the offence of robbery with violence.

13. In conclusion, I find that the Applicant has failed to demonstrate any illegality, incorrectness, impropriety and irregularity in the proceedings that led to the sentence that was meted against him and the sentence itself. I also find that he has not complained that the sentence was either harsh or manifestly excessive. Therefore, the Applicant has demonstrated no reason or justification that has been demonstrated by the Applicant to require this court's intervention in the sentence that was passed against him by way of revision.

14. Accordingly, the application has been found to be without merit and is hereby dismissed.

Orders accordingly.

**RULING DELIVERED VIRTUALLY, DATED and SIGNED at NAIROBI this 9<sup>TH</sup> day of DECEMBER, 2021.**

**D. O. CHEPKWONY**

**JUDGE**