

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MILIMANI

CRIMINAL DIVISION

CRIMINAL REVISION NO.200 OF 2019

JACOB KINYUA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant, Jacob Kinyua entered into a plea bargaining agreement with the prosecution whereby he pleaded guilty for the offence of causing **death by dangerous driving** contrary to **Section 46(1)** of the **Traffic Act**. The Applicant pled guilty to the fact that on the 8th September 2012 along Fedha Road within Nairobi County, while driving motor vehicle registration No.KBA 615T, he dangerously overtook another motor vehicle as a result of which he knocked down Beatrice Njambi, a pedestrian who sustained fatal injuries. He was further convicted of **reckless driving** contrary to **Section 47(1)** of the **Traffic Act**. The particulars of the offence were that on the same day and in the same place while driving the same motor vehicle he knocked down a pedestrian by the name Diana Wanjiru causing her to sustain serious injuries. In the respect of the first count, he was sentenced to serve five (5) years imprisonment. In respect of the second count, he was ordered to pay a fine of Kshs.100,000/- or in default serve two (2) years imprisonment. If he failed to pay the fine, the custodial sentences would run consecutively. It should be noted that the custodial sentence of five years imprisonment was part of the plea bargain agreement. This sentence was meted out on 20th February 2018.

The plea bargain agreement notwithstanding, the Applicant has applied to this court to have the sentence revised. The Applicant stated that he had sought forgiveness from the family of the victims and was ready to be reconciled with them. He specifically pleaded with the court to order that the custodial sentences imposed on him to be ordered to run concurrently instead of consecutively. Ms. Nyauncho for the State was opposed to the Applicant's application for reduction of sentence. She submitted that the Applicant absconded from court for a period of two years when he was released on bond. The Applicant was not a first offender. The sentence that was meted on the Applicant fitted the crime. She urged the court not to interfere with the same.

The Applicant's application essentially seeks the exercise of this court's discretion in sentencing. This court can only interfere with the exercise of sentencing discretion by the trial court if it determines that that discretion was wrongly exercised. The Court of Appeal in **Ahmad Abolfathi Mohammed & Another –vs- Republic Criminal Appeal No. 135 of 2016** (unreported) held at Page 25 thus:

“As what is challenged in this appeal regarding sentence is essentially the exercise of discretion, as a principle this Court will normally not interfere with exercise of discretion by the court appealed from unless it is demonstrated that the court acted on wrong principle; ignored material factors; took into account irrelevant considerations; or on the whole that the sentence is manifestly excessive. In Bernard Kimani Gacheru v. Republic, Cr App No.188 of 2000 this Court stated thus:

“It is now settled law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account, some wrong material, or acted on a wrong principle. Even if, the Appellate Court feels that the sentence is heavy and that the Appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, any one of the matters already stated is shown to exist.”

In the present application, it was clear to the court that the Applicant is serving a custodial sentence that was subject to a plea bargain agreement. This court cannot interfere with a sentence arrived at as a result of a plea bargain agreement unless grounds are laid that will entitle the court to set aside a legally binding agreement. Those grounds include coercion, intimidation, mistake and undue influence. The Applicant can also plead that the sentence that he had agreed to was illegal in the circumstances. In the present case, it was evident to this court that the custodial sentence that was imposed on the Applicant as a result of the plea bargain agreement was not only legal but fitted the crime. The circumstances in which the offence occurred called for such sentence. This court will not therefore interfere with the custodial sentence that was imposed in respect of the first count.

As regard the second count, where the Applicant is serving a default custodial sentence of two years imprisonment, this court agrees with the Applicant that he ought to serve concurrent custodial sentence instead of a consecutive one. There was no reason put forward by the prosecution for the Applicant to serve a consecutive sentence instead of a concurrent one. In the premises therefore, the Applicant shall serve a total custodial term of five (5) years imprisonment with effect from 20th February 2018. It is so ordered.

DATED AT NAIROBI THIS 10TH JUNE 2020

L. KIMARU

JUDGE