



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MALINDI

CRIMINAL REVISION CASE NO. 162 OF 2020

REPUBLIC.....PROSECUTOR

VERSUS

RAMADHAN ATHMAN SAID.....ACCUSED

Coram: Hon. Justice R. Nyakundi

Ms. Sombo for State

Accused Person

RULING

Background

The applicant pleaded guilty to the charge of cutting and removing forest product contrary to Section 64 (1) as read with 64 (2) and 68 (1) (c) of the Forest Conservation and Management Act. On consideration of the matter the Learned trial Magistrate convicted him on his own plea of guilty and sentenced him to a fine of Kshs.20,000/= in default (6) six months imprisonment.

The applicant being aggrieved with the order on sentence appealed to this Court for its variation and or substitution.

Determination

The principles guiding interference with sentencing by the appellate Court have been previously revisited several times in decisions made by superior Courts.

In **Ogolla S/o Owuor v R {1954} EACA 270** the Court held that:

“The Court does not alter a sentence unless the trial Judge has acted upon wrong principles or overlooked some material factors. This was further echoed in the dictum of the cases in R v Shershowsky {1912} CCA TLR 263 as emphasized in Shadrack Kipkoech Kogo v R Criminal Appeal No. 253 of 2003 thus “Sentence is essentially an exercise of discretion by the trial Court and for this Court to interfere it must be shown that in passing the sentence, the sentencing Court took into account an irrelevance factor or that a wrong principle was applied or that short of these, the sentence itself is so excessive and therefore an error of principle must be interfered.” (See also Sayeka v R {1989} KLR 306)

This approach therefore reaffirms the substantive legal proposition that appeal against sentence as appeals from a trial Court Judgment are appeals in *Stricto Sensu*. They are of a corrective nature and not a trial denovo.

Under the principles in **Ogolla (supra)** and **Shadrack Kipkoech Kogo cases (supra)**. In the instant case the applicant has failed to demonstrate how the Learned trial Magistrate ventured outside her discretionary framework in imposing the sentence complained of to punish the crime.

The other purpose of which the appellate Courts directs its mind interalia is similarly captured in Section 382 of the Criminal Procedure Code. It cannot be inferred from the record that the sentence occasioned prejudice or a failure of justice for it to be reversed on appeal.

For these reasons I find the revision lacks merit and so it stands dismissed.

DATED, SIGNED AND DELIVERED AT MALINDI THIS 17TH DAY OF JULY 2020

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R. NYAKUNDI

JUDGE