



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL REVISION 121 OF 2019

MARY ATAI MUNG'AO.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

R U L I N G

The applicant filed Notice of Motion on 24th July 2019. The main order sought was, ***“That this Honourable Court be pleased to grant orders for revision of the imposed sentence of fifteen (15) years imprisonment commencing from the date I was arrested in respect of High Court Criminal Case Number 90 of 2014 in High Court of Kenya at Nakuru based on mitigating factor of leniency.”***

The application is supported by the applicants affidavit filed on the same date.

In it she depones that she was charged with **Murder Contrary to Section 203 as read with Section 204 of the Criminal Procedure Code, tried, convicted and sentenced to fifteen (15) years imprisonment**, that in the sentence the trial court took into consideration that she had been in custody for five (5) years so that she would serve ***“Seven (7) years imprisonment and three (3) years non-custodial”***. That she has now served five (5) years in prison and is of the view that she deserves a revision.

During the hearing of the application, the applicant submitted that she had been in custody since 2014 and was really remorseful for the offence. That at the time of arrest she had young children who depended on her together with her parent who suffers from hypertension. That she too has been unwell since she went to prison, back pains and ulcers. She sought non-custodial sentence.

Ms, Wambui for the state opposed the application on the ground that the application could not benefit from **Muruatetu** because she was not sentenced to death. That the trial court must have considered her mitigation, and even though this court had revisionary powers, the issues raised could only be dealt with by the Court of Appeal.

I have carefully considered the application, the affidavit, and the rival submissions. The only issue for determination is whether this court can revise the applicant’s sentence.

The powers of the High Court on revision are set out under **Section 362 and 367 of the Criminal Procedure Code and Article 165 (6) and (7) of the Constitution**.

The power of revision as set out under **Section 362** is with regard to the proceedings in the subordinate court.

Clearly therefore the orders sought by the applicant herein cannot be granted.

As to whether the court can re-sentence the applicant on “mitigating factors”. It is evident that despite facing a capital charge, the applicant got off with fifteen (15) years imprisonment including the period spend in remand custody. She was not subjected to any mandatory sentence that would bring her sentence within the purview of the **Muruatetu** principle.

Finally, if indeed the trial court sentenced her to seven (7) years imprisonment and three (3) years non-custodial with effect from 2014, then the seven (7) years will end in 2021 and she can start her non-custodial sentence. I must hasten to state here that she did not annex her committal documents for this court to confirm that indeed those were the orders of the trial court, but if they were, then she has one (1) year or less to go.

In any event this is the wrong forum to bring her application, and if she was dissatisfied with her sentence as given by this court, the right forum would be the Court of Appeal.

The application is not merited and the same is dismissed.

Dated, Delivered and Signed at Nakuru this 2nd day of September 2020.

In the presence of: VIA ZOOM

Court Assistant Edna

For state: Ms. Kibiriu

Applicant present

Mumbua T. Matheka

Judge

2nd September, 2020.