



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CRIMINAL REVISION NO. 41 OF 2019

(BEING REVIEW OF SENTENCING IN CMCRC NO.543 OF 2016 AT SPMS COURT SIAKAGO)

EMILY NJOKI KIRINGA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING ON REVISION

1. A brief outline of the case was that the applicant, **Emily Njoki Kiringa** was charged with the offence of Grievous Harm contrary to Section 234 of the Penal Code; the particulars of the offence are that on the 27/04/2018 at Kiandunika Estate, Siakago Sub-Location, in Mbeere North Sub-County within Embu County the applicant intentionally and unlawfully assaulted **LUCY MUTHONI NJERU** thereby causing her grievous bodily harm;

2. The applicant was convicted and sentenced to serve a term of five (5) years imprisonment; being aggrieved with the sentence, the applicant filed this instant application seeking revision of the sentence to a non-custodial term;

3. At the hearing hereof the applicant was unrepresented whereas the respondent was represented by Prosecuting Counsel for the State Ms. Chemenjo and both parties made oral submissions; hereunder are the parties' respective submissions;

APPLICANT'S CASE

4. The application is for review of sentence under the provisions of Sections 362 and 364 of the Criminal Procedure Code; that she had spent a period of eleven (11) months in custody from the date of her conviction;

5. To support her prayer for review of sentence the applicant stated that she was a first offender; that she had fully reformed whilst in custody and was very remorseful for the actions she had taken; that she was the sole bread winner of her family and urged the court to exercise leniency as she was now rehabilitated; she prayed that her application be allowed and that she be granted a non-custodial sentence;

RESPONDENT'S CASE

6. In response counsel was not opposed to the prayer for the review of the sentence and called for a Probation Officer Report to be prepared before a decision can be made by the court.

ISSUES FOR DETERMINATION

7. After hearing the submissions of both parties and upon reading the Probation Officers report this court has framed one issue for determination;

(i) whether the trial court erred in imposing the term of five (5) years imprisonment;

ANALYSIS

Whether the trial court erred in imposing the term of five (5) years imprisonment

8. In this instance the trial court after conducting a full hearing found that there was overwhelming evidence that the applicant had savagely assaulted the complainant with a knife; and it made a finding that there were very serious injuries sustained by the complainant and classified them as grievous harm; the applicant was then found guilty, convicted and then sentenced to the term of five years imprisonment.

9. The provisions of Section 234 of the Penal Code provides for the punishment for the offence and reads as follows;

“Any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for life.”

10. This court’s powers of revision are set out under the provisions of Sections 362 through to 366 of the Criminal Procedure Code; the scope of this court’s revisionary powers are that it can call for and examine the record of criminal proceedings of a subordinate court so as to satisfy itself as to the propriety and legality of the decision and that it has been made according to the law; the applicable section for revision in this instance is found at Section 364 which reads as follows;

“(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.”

11. Therefore in the event this court finds or is satisfied that there was any impropriety or illegality in the sentencing and that it has not been made in accordance with the law then in such cases this court can alter or reverse the order;

12. In this instance the applicant has not demonstrated that the trial court erred in imposing the term of five(5) years imprisonment or committed any illegality, impropriety or mistake when sentencing the applicant; in fact considering the nature of the injuries sustained by the complainant this court’s considered view is that the trial court was very lenient;

13. The court record reflects that the trial court did not overlook any material factors when passing sentence and took into consideration the circumstances of the case and the fact that the applicant was a first time offender and that she was remorseful; the sentence is as provided by the law and is found to be legal and that there is no reason found that warrants interference with it as maximum prescribed by law is a life sentence;

14. It is noted that the applicant has not exhausted her avenues of appeal; and it is trite law that when an appeal lies from a sentence and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed;

15. This court finds no good reason that warrants the orders sought for revision to alter or reverse the custodial sentence to a non-custodial sentence; the application is found lacking in merit and is hereby disallowed.

FINDINGS AND DETERMINATION

16. For the foregoing reasons this court makes the following findings and determinations;

(i) The application is lacking in merit and it is hereby dismissed;

(ii) This court finds that the trial court did not err in imposing the custodial term of five (5) years imprisonment; and finds no good reason that warrants the interference with the sentence imposed which is found to be legal;

(iii) The sentence imposed is hereby affirmed;

Orders accordingly.

Dated, Signed and Delivered Electronically at Nyeri this 15th day of October, 2020.

HON. A. MSHILA

JUDGE