



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MALINDI

CRIMINAL REVISION NO. 44 OF 2019

REPUBLICAPPLICANT

VERSUS

PJK.....RESPONDENT

Coram: Hon. Justice R. Nyakundi

Mr. Alenga for the applicant

Respondent in person

RULING

The instant matter was brought pursuant to Sections 362 and 364 of the Criminal Procedure Code and Article 25(c), 27(1),47(1) and 159(2) (a) of the Constitution of Kenya 2010. The victim through **Odhiambo S. E. & Co. Advocates** have expressed dissatisfaction towards the decision of the trial court and she now seeks the court's indulgence to review the Judgment and sentence. The grounds for review as laid down by the applicant are as follows:

(a) The applicant challenges the age of the Respondent noting that both the age assessment reports and the probation officers report indicate the same.

(b) The Applicant said that they have it on good authority that the Respondent was born in 1984 and his knowledge is from the fact that the Respondent is the victim's neighbor.

(c) That the Respondent's national identity card indicates his year of birth as 1998 which goes to show that he was over the age of 18 when he committed the offence.

The applicant has therefore urged the court to call for the trial court record and order for further investigations with regard to the age of the accused who is serving 3 years' probation. Further that the applicant is willing to bring more evidence before court to prove that the Respondent is not a minor.

Determination

In terms of Section 362 of the Criminal Procedure Code, the High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself to the correctness, legality and propriety of any finding sentence or order recorded or passed, and as to the regularity of the proceedings. I shall proceed to examine the correctness, legality and propriety of the record of proceedings herein as under.

I have perused the record of proceedings. The question raised by the applicants is as regards the age of the respondent. In the Learned Magistrate's Judgment, it was established that the accused was 17 years of age at the time of the commission of the offence. The same was confirmed by the Presentence report produced by the probation officer. There is nowhere in the record of proceedings the issue of the age of the accused was in contestation. The applicant even had the chance to object the same upon sentencing of the respondent.

It is also important to note that the request made by the applicant to order an investigation into the age of the respondent is untenable. It seems from the reading of Section 362, an application for revision ought to be lodged in order to examine the record of any criminal proceedings before a subordinate court so as to satisfy itself in light of the correctness, legality and propriety of any finding sentence or order recorded or passed, and as to the regularity of the proceedings. The record of proceedings herein does not show any kind of incorrectness,

illegality and impropriety whatsoever. In my view, the court in a case like the one at hand should only look into what is contained in the record of proceedings and not anything outside its contents.

Accordingly, for the above reasons, the applicant's application for revision of the trial court's decisions on age of the respondent is hereby denied for want of merit.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MALINDI THIS 1ST OF OCTOBER 2020

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R. NYAKUNDI

JUDGE

In the presence of

1. Mr. Alenga for the state
2. Respondent in person