



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT CHUKA

CRIMINAL REVISION NO. 4 OF 2019

(From original conviction and sentence in Criminal Case No. 1058 of 2018

of the Chief Magistrate's Court at Chuka)

REPUBLIC.....APPLICANT

VERSUS

FRIDAH KENDI MURIUNGI.....RESPONDENT

(From original conviction and sentence in criminal case No. 1058/2018 of the

Chief Magistrate's Court at Chuka delivered by HON. N. KAHARA (SRM) on 10/12/2018).

RULING

1. **FRIDAH KENDI MURIUNGI**, the Respondent herein was charged with the offence of acting as a Laboratory Technologist in a Health Institution in Kenya without Registration contrary to **Section 19(1)** as read with **Section 19(2)** of the Medical Laboratory Technician and Technologist Act No. 10 of 1999. The particulars of the charge were that on diverse dates between 1st January and 12th July 2018 at Kiangondu Dispensary within Tharaka Nithi County, the Respondent acted as a Medical Laboratory Technologist without registration by the Kenya Medical Laboratory Technicians and Technologists Board as required by Medical Laboratory Technicians and Technologists Act No.10 of 1999.
2. The Respondent pleaded guilty to the charge and was convicted by the trial court on her own plea of guilty and sentenced to pay a fine of Kshs.20,000/- or 6 months imprisonment. The Respondent elected to pay the fine.
3. The complaint in the case Kenya Medical Laboratory Technicians & Technologists Board vide a letter dated 16th January, 2019 complained about the leniency of the sentence and this court upon receipt of the letter called for the lower court file under the provisions of **Section 362 Criminal Procedure Code** with a view to satisfying myself about the legality, regularity, correctness and propriety of the proceedings in that court and the sentence meted out.
4. Upon perusal of the lower court file, this court found the basis to fix the matter for review and pursuant to the provisions of **Section 364 (2) Criminal Procedure Code**, the Respondent was summoned to respond to the application for review.
5. The main ground for review of the sentence as advanced by the complainant and Director of Public Prosecution is that the sentence meted out against the Respondent herein was not commensurate with the offence for which the Respondent was charged. The State through the Director of Public Prosecution has asserted that unless the sentence meted out against the Respondent and others of like minded perpetrators of crime, is deterrent enough, their illegal practices, shall continue posing great danger to the public.
6. The Director of Public Prosecution has contended that while the law provided for a fine not exceeding Kshs.100,000/- the Respondent was only fined Kshs.20,000/- despite having drew a hefty salary for a period of 2 years working without a licence and therefore leading to loss of public funds. It is the contention of the applicant that the Respondent offered services to unsuspecting members of the public at Kiangondu Dispensary within Tharaka Nithi County which services may have led to loss of lives. Mr. Momanyi learned counsel for the Director for Public Prosecution termed the sentence meted out against the Respondent herein as too lenient and a slap in the wrist given the gravity of the offence.
7. In her response, the Respondent vide a Replying Affidavit sworn on 29th January, 2019 has deposed that the offence for which she was charged and convicted does not relate to her qualification as in her view, she is qualified and only that she lacks a license.

8. The Respondent further states that she pleaded guilty upon advise from counsel after learning that the charge did not attract a fine of not more than Kshs.100,000/-. She has maintained that the trial magistrate exercised her discretion well by imposing a fine of Kshs.20,000/- and has urged this court not to interfere with the same. She has submitted that there is nothing wrong with the correctness, legality and propriety of the sentence imposed on her.

9. This court having called for the lower court file for purposes of **Section 362** of the **Criminal Procedure Code** and having perused the same I am satisfied that the proceedings leading to the conviction and sentencing of the Respondent was correct and the legality of the same has not been challenged. What is contested herein is the propriety of the sentence meted out against the Respondent.

10. It is now trite that this court in the exercise of its revisionary powers cannot interfere with a discretion exercised by a trial court unless it is established that the trial court took into consideration extraneous or irrelevant factors, or failed to take into consideration the relevant factor or that the exercise of discretion was injudicious. I have perused through the charge sheet presented to the lower court and noted that the Respondent pleaded guilty to the charge as I have observed above. She was convicted on her own plea and while the law provides for a fine not exceeding Kshs.100,000/- or 3 years imprisonment in default or both fine and imprisonment, the trial court exercised her discretion under **Section 26(2)** of the **Penal Code** and imposed a fine of Kshs.20,000/- which of course is legal under **Section 19(2)** of Kenya Medical Laboratory Technicians & Technologist Act No. 10 of 1999.

11. The applicant has contended that the sentence imposed was too lenient compared to the gravity of the offence but looking at the proceedings from the lower court, the Director of Public Prosecution did not advance any aggravating factors to guide the trial court to arrive at an appropriate sentence. However there is no denying fact that there were indeed aggravating factors which ought to have been placed before the trial court for consideration.

12. For one, it is a fact the members of public were exposed to risk of having unqualified person attend to them. I am not persuaded by the Respondent's claim that she was qualified. The statutory body mandated to vet and ascertain both academic and professional qualifications of individuals competent to offer the medical services in that field, is Kenya Medical Laboratory Technician and Technologist Board. That body has come out to disown the qualifications of the Respondent stating that she was unregistered. Of course it is presumed that only qualified personnel are eligible for registration and therefore without registration, one cannot competently offer the services in any Health Institution and if he/she does then she/he commits an offence. An offence was committed here and the Respondent admitted committing the said offence.

13. Having considered this matter, this court finds that the trial court exercised its discretion in imposing a sentence that was apparently inappropriate given the aggravating circumstances not taken into consideration which is exposing members of the public especially the Wanjiku in the rural area (who may not be able to afford better equipped Hospitals) to risks associated with placing their health and life in the hands of unqualified persons. That practice is rampant in this county and a deterrent sentence was called for to deter the practice for the safety of the public.

I therefore find basis to interfere with the discretion exercised by the lower court in imposing a sentence of Kshs.20,000/-. That sentence was too lenient in the circumstances. That sentence is hereby set aside and in its place I impose a fine of Kshs.80,000/- or 3 years imprisonment in default.

Dated, signed and delivered at Chuka this 4th day of March, 2019.

R.K. LIMO

JUDGE

4/3/2019

Ruling, signed, dated and delivered in the open court in presence of Momanyi for Applicant and Kinoti holding brief for Njau for the Respondent.

R. K. LIMO

JUDGE

4/3/2019