

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI
CRIMINAL DIVISION
CRIMINAL REVISION 740 OF 2018

RAJABU JUMA JUTTO.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The Applicant herein, a Tanzanian national, was charged with trafficking in narcotic drugs contrary to **Section 4(a) of the Narcotic and Psychotropic Substances Act no.4 of 1994**. It was alleged that he trafficked cocaine valued at Ksh. 9,125,000/-. At the conclusion, of the trial he was convicted and sentenced to serve twenty five (25) years imprisonment and pay a fine of Kenya Shillings twenty seven million three hundred and seventy five thousand (Ksh. 27,375,000). In default of the fine, he would serve a sentence of three (3) years imprisonment. Dissatisfied, he appealed against both the conviction and sentence. Honorable Justice F.A. Ochieng upheld the conviction and part of the sentence. He set aside the default imprisonment sentence against the fine which he held was illegal.

2. The Applicant against the decision of the high court but prematurely withdrew the same. He informed the court that he was satisfied with both the sentence and conviction. He made an application against this backdrop urging the court to revise his sentence.

3. The Applicant urged the court to consider that he had served thirteen (13) years of his twenty five (25) year sentence. It was his submission that he had since reformed. He further submitted that he was a foreigner. The Respondent argued that the conviction and sentence were safe and urged that the court only considers the period the Applicant had spent in remand before conviction.

4. The court ordered a probation officer's report. It was filed on the 3rd May, 2019. The report states that the family of the Applicant resides in Dar es Salaam. It was the sentiment of the officer that the Applicant had not been visited by the family since 2017 due to the distance. The report also highlighted the familial responsibilities that the Applicant had which his wife has had to shoulder. The report observed that the Applicant is aged 51 years old and having served 13 years of the jail term means that he was incarcerated at the age of 38 years. Lastly, prison authorities vouched for his character and discipline. He has attained mechanical and carpentry training in prison. He is further an Imam at the prison's mosque.

5. This is a case in which the Applicant has opted to give court half truths about the background to his case. He has concealed material facts that he filed an appeal to the High Court at Nairobi, being High Court Appeal No. 239 of 2007 arising from the same conviction. The result of the appeal was that it was dismissed save that the default imprisonment of three years was set aside by Hon. Justice F.A. Ochieng. The result of the appeal alone sufficiently demonstrates that the issue of sentence was dealt with by the judge. This court being of concurrent jurisdiction cannot purport to sit on an appeal of a decision of a concurrent court. The court is *res judicata*. Therefore, notwithstanding the detailed mitigating factors offered by the Applicant, it is an application that ought not to have been filed in the first instance to this court. I accordingly dismiss it.

Dated and delivered at Nairobi This 4th Day of June, 2019.

G.W.NGENYE-MACHARIA

JUDGE

In the presence of;

1. *Applicant in person.*
2. *Miss Akunja for the Respondent.*