



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAJIADO**

**CRIMINAL MISC. APPLICATION NO. 5 OF 2018**

**DAVID JOSEPH MAMIRO.....APPLICANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**RULING ON REVISION**

1. The applicant was charged at the Chief Magistrate's Court Kajiado with the offence of robbery with violence contrary to section 296(2) of the Penal Code and the alternative count of handling stolen property contrary to section 322(1) as read with section 322(2) of the Penal Code in criminal case No. 11 of 2013. After a full trial, he was acquitted of the offence of robbery with violence but convicted of the alternative count of handling. He was sentenced to a prison term of 7 years which he was serving at the time of filing this application.

2. He has applied for revision of the sentence. He argues that the trial court did not take into account the period he had been in remand awaiting his trial as envisaged by section 137(1) (a) of the Criminal Procedure Code (CPC). He filed an affidavit in support of his application on the same day reiterating his averments in the application.

3. In his grounds in support of the apposition, the applicant urges this Court to exercise its discretion, review the sentence and order that the sentences in criminal case 48 of 2013 and 11 of 2013 run concurrently.

4. I have gone through the application and the record of proceedings in criminal case Nos. 11 of 2013 as well as 48 of 2013. It appears that the applicant was charged with two different criminal cases; criminal case Nos. 48 of 2013 at Milimani and 11 of 2013 at Kajiado. He was sentenced to serve 4 years in prison in criminal Case No. 48 of 2013 on 18<sup>th</sup> November 2016 for handling stolen property but acquitted of the charge of robbery with violence. In criminal case No. 11 of 2013, he was again convicted for the alternative offence of handling stolen property but acquitted on the offence of robbery with violence. He was sentenced to serve 7 years on 26<sup>th</sup> January 2015. Cumulatively, he was sentenced to 11 years. .

5. When the applicant appeared in court on 4<sup>th</sup> July, 2019, he urged this Court to grant his application. My understanding of his application was that he wanted the two sentences to run concurrently even though they arose from different cases and convictions.

6. I have carefully, considered this application. I have also called for and perused the records relating to criminal case Nos. 11 of 2013 and 48 both of 2013. In criminal case No. 11, the applicant had been charged with robbery with violence and the alternative count of handling stolen property. He was convicted on the alternative count and sentenced to 7 years imprisonment.

7. With regard to file criminal case No. 48 of 2013, I note that the applicant was charged together with Alexander Njoroge Muthoni, and in a judgement delivered by Hon. Gandani, Chief Magistrate, on 18<sup>th</sup> November, 2016, the applicant was convicted for handling and sentenced to 4 years. I have also called for and perused the record in criminal case No. 48 of 2013. I note that the applicant made an application for review and on 8<sup>th</sup> March, 2018, the court, **Kimaru, J.** reviewed the applicant's sentence of 7 years in criminal case No. 11 of 2013 and reduced it to 4 years with effect from the date of his sentence, 26<sup>th</sup> January, 2015.

8. If the record referred to above is correct, and I have no doubt it is, this Court, **Kimaru J.** having reduced the sentence to 4 years with effect from the applicant's date of sentence, (26<sup>th</sup> January 2015), in criminal case No. 11 of 2013 he may have served that sentence by now. That is not the mandate of this court in this application.

9. Regarding criminal case No. 48 of 2013, the record shows that the applicant's co-convict applied for revision which was allowed and his sentence was reduced to the period served. It is not clear to this court whether the applicant benefitted from that revision. If not, he could approach that court for revision if he wishes.

10. For these reasons, I do not see the basis upon which I should review the sentence once again or order that they run concurrently. Consequently, the applicant's application is declined and dismissed.

**Dated Signed and Delivered at Kajiado this 4<sup>th</sup> October 2019.**

**E C MWITA**

**JUDGE**