



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL REVISION NO. 18 OF 2019

MICHAEL TUTI OKETCH APPLICANT

VERSUS

REPUBLIC RESPONDENT

RULING

1. The applicant herein was convicted on his own plea of guilty of the offence of rioting after proclamation contrary to Section 83 of the Penal Code Cap 63 Laws of Kenya and sentenced to serve 5 years imprisonment. The applicant filed the instant application seeking for revision of the sentence. The grounds in support of the application are that the sentence imposed on the applicant was manifestly excessive, harsh and severe. That the trial magistrate failed to exercise its discretion judiciously and failed to consider the circumstances leading to the commission of the offence. Further that the trial court failed to consider sentencing the applicant to a fine as provided by Section 26 (3) of the Penal Code. That the trial court failed to consider that the applicant was a first offender. The advocate for the applicant, Mr. Mukabane, urged the court to reduce the sentence, impose a fine or to consider the time served as adequate.

2. The State did not oppose the application.

3. The facts of the case against the applicant were that on the 19/2/2018 there was an unlawful riot at Luanda township. The OCS Luanda Police and a contingent of other policemen headed to the place. The OCS ordered the gathering to disperse. The applicant refused to abide with the orders and started to throw stones to the police officers. Police officers were forced to use teargas to disperse the gathering. The applicant was arrested. He was taken to Luanda Police Station. He was charged with the offence. He pleaded guilty to the charge. He was convicted and sentenced.

4. The application for revision is made in pursuance of the provisions of Section 362 of the Criminal Procedure Code. The said section gives powers to the High Court to call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.

5. Article 167 (6) and (7) of the Constitution grants the High Court supervisory jurisdiction over subordinate courts and for that purpose may call for the record of any proceedings from a subordinate court so as to satisfy itself of the things stated in Section 362 of the CPC.

6. When exercising its powers of revision provided by Section 362 of the CPC the court has to always bear in mind that such powers should not be exercised so as to turn a revision into an appeal. The revision should only be limited to rectifying a manifest error in the proceedings. In **George Aladwa Omwera –Vs- Republic, High Court Milimani Criminal Revision No. 277 of 2015 (2016) eKLR**, Wakiaga J. held that:-

***“In exercising supervisory jurisdiction under Article 165(6) the court does not exercise appellate jurisdiction and therefore cannot review or reweigh evidence upon which the determination of the lower court is based, it can only demolish the order which it considers erroneous or without jurisdiction and which constitutes gross violation of the fair administration of justice but does not substitute its own view to those of the inferior tribunals.*”**

In **Veerappa Pillai –Vs- Remaan Ltd** the Supreme Court of India has this to say:-

***“The supervisory powers is obviously intended to enable the High court use them in grave cases where the subordinate tribunal or bodies or officer acts wholly without jurisdiction or excess of it or in violation of the principles of natural justice or refuses to exercise jurisdiction vested in them or there is an apparent error on the face the record and such action, omission, error or excess has resulted in manifest injustice. However extensive the jurisdiction may be, it seems to us that it is not so wide and large as to enable the High Court to convert itself into a Court of Appeal and examine for itself the correctness of the decision impugned and decide what the proper view on the order be made.....”*”**

7. The advocate for the applicant cited the case of **Ndolo Kitingu Mutua –Vs- Republic (2019) eKLR** where the court considered review of sentence in a case where the applicant had been sentenced by the lower court to serve 7 years imprisonment for the offence of stealing stock contrary to Section 278 of the Penal code.

8. I have considered the application and the grounds adduced in support of the application. The applicant was convicted of the offence of rioting after proclamation contrary to Section 83 of the Penal Code. The punishment for the offence under that Section is life imprisonment. The applicant was sentenced to serve 5 years imprisonment.

9. Sentencing is a discretion of the trial court. This court can only interfere in a revision under the provisions of Section 362 of the Criminal Procedure Code if there is anything in the conduct of the case by the trial court to indicate that there was an irregularity or illegality. In the case against the applicant there was no illegality or irregularity in the sentence imposed by the trial court. The court did not act in excess of its jurisdiction or violate any principles of sentencing. There is no error on sentencing apparent on the face of the record. If the sentence imposed on the applicant was harsh or excessive or that the trial court erred in not giving the applicant the option of a fine those are grounds for appeal and not revision. This court is mindful of the fact that it should not convert itself into an appeal court when exercising its powers of revision. I am therefore of the considered view that the applicant should have filed an appeal against the sentence and not an application for revision.

10. The upshot is that there is no merit in the application for revision. The application is accordingly dismissed.

Delivered, dated and signed in open court at Kakamega this 16th day of October, 2019.

J. NJAGI

JUDGE

In the presence of:

Mr. Malalah holding brief for Mr. Mukabane for applicant

Miss Ombega for State

Applicant

Court Assistant - George