

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO.669 OF 2018

PATRICK RIVORE IBRAHIM.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant, Patrick Rivore Ibrahim was charged with the offence of **tampering with Telecommunication Plant** contrary to **Section 32(c)** of the **Kenya Information and Communication Amendment Act No.12 of 2012**. The particulars of the offence were that on 10th August 2016 along Ngong Road, near City Mortuary in Nairobi County, the Applicant, jointly with others not before court, with the intent to commit mischief, tampered with telecommunication plant namely cables by cutting the same, being the property of Telecom Kenya Limited. When the Applicant was arraigned before the trial magistrate's court, he pleaded not guilty to the charge. After full trial, he was convicted as charged and sentenced to pay a fine of Kshs.5 million or serve ten (10) years imprisonment. The Applicant was aggrieved by the sentence and has applied to this court for a revision of the same.

In his application, the Applicant contends that the sentence that was imposed upon him was harsh and excessive. He pleads with the court to reduce the same taking into consideration that the value of the subject matter was Kshs.12,000/-. He pleaded with the court to take into consideration that he is a first offender and has been in prison for a period of two (2) years. Ms. Sigei for the State opposed the application. She submitted that the damaged property belonged to the State. The sentence that was imposed was the minimum sentence specified under the Section of the law that the Appellant was convicted. She was of the view that the Applicant had not served a substantial part of the sentence that was imposed by the trial court to justify this court to exercise leniency on him.

The Applicant is essentially asking this court to revise the exercise of judicial discretion by the trial court which sentenced him. The Court of Appeal in **Ahmad Abolfathi Mohammed & Another –vs- Republic Criminal Appeal No. 135 of 2016** (unreported) held at Page 25 thus:

*“As what is challenged in this appeal regarding sentence is essentially the exercise of discretion, as a principle this Court will normally not interfere with exercise of discretion by the court appealed from unless it is demonstrated that the court acted on wrong principle; ignored material factors; took into account irrelevant considerations; or on the whole that the sentence is manifestly excessive. In **Bernard Kimani Gacheru v. Republic, Cr App No.188 of 2000** this Court stated thus:*

“It is now settled law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account, some wrong material, or acted on a wrong principle. Even if, the Appellate Court feels that the sentence is heavy and that the Appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, any one of the matters already stated is shown to exist.”

In the present application, the Applicant pleads with the court for a reduction of sentence. He is of the view that the sentence that was imposed upon him was harsh and excessive in the circumstances. **Section 32** of the **Kenya Information and Communication Act** set out the sentence to be imposed in the event that a person is convicted. Such a convict **“shall be liable, on conviction to a fine of not less than five million shillings or to imprisonment for a term of not less than ten years or to both.”** The sentence provided for in the **Act** reflects the gravity the law treats the offence. This is because, the offence for which the Applicant was convicted, is not merely that of cutting and vandalizing communication wires but has an implication to the communication network in the country. Such acts as were committed by the Applicant has serious economic implications, and in certain instances it be interpreted to amount to economic sabotage. The Applicant's submission that he had only cut and vandalized wires worth Kshs.12,000/- is out of synch the intentions of the **Kenya Information and Communication Act** in creating the offence and imposing such stiff sentence. This court does not agree with the Applicant that the sentence that was imposed on him was either harsh or excessive. It was in accordance with the law.

In the premises therefore, the Applicant's plea for reduction of sentence lacks merit and is hereby dismissed. The Applicant shall serve the sentence imposed by the trial court. It is so ordered.

DATED AT NAIROBI THIS 16TH DAY OF NOVEMBER 2018

L. KIMARU

JUDGE