



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT CHUKA**

**CRIMINAL REVISION NO.2 OF 2017**

**ARMSTRONG MWITI RIUNGU.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

***(Intended Appeal from Conviction and sentence of the S.P.M'S Court in Criminal Case No. 73 of 2015 at Chuka delivered by HON. L.A. MUMASSABBA (RM) on 19/9/2016).***

**RULING**

1. **ARMSTRONG MWITI RIUNGU** the applicant herein was charged with the offence of preparation to commit a felony contrary to **Section 308 (1)** of the **Penal Code** through Chuka P.M's Court Criminal No. 73 of 2015. The particulars of the offence as per the charge sheet presented to that trial court was that on 26<sup>th</sup> January, 2015 at about 8pm at Munga village, Murugi Location within Tharaka Nithi County, the applicant was found armed with a panga and a hammer in circumstances that indicated that he was so harmed with intent to commit a felony.
2. The record of proceedings from the lower court forwarded to this court reveals that the applicant denied the offence but after trial, the trial court found him guilty as charged and convicted him sentencing him to serve 4 years imprisonment on 19<sup>th</sup> September 2016.
3. The applicant has now brought on undated application filed on 25/1/2017 with unclear prayers but the supporting affidavit sworn on 8th December, 2016 appears to suggest that the applicant is applying for a revision of his sentence as he has asked the court to review the term of his sentence to a non-custodial sentence. He claims that he is remorseful for the offence he committed and is asking for forgiveness. He also claims that he is a sole breadwinner in his young family besides also caring for his aged parents.
4. This court has gone through the lower court file pursuant to **Section 362** of the Criminal Procedure Code and I am satisfied that the offence under which the applicant was charged, is in tandem with the particulars of the charge and the evidence tendered. The applicant was satisfied with his conviction and looking at the provisions of the **Section 308(1)** of the Penal Code the applicant's sentence in fact fell below the minimum sentence provided. The **Section (308(1))** of the Penal Code provides as follows:-

***"Any person found armed with dangerous weapon or offensive weapon in circumstances that indicate that he was so armed with intent to commit a felony is guilty of the felony and is liable to imprisonment of not less than seven years and not more than fifteen years." (Emphasis added)***

The above provision shows that the court's discretion under the above section is limited to a period between 7 years and 15 years. This court finds the sentence of 4 years handed out against the applicant did not conform with law and in view of the powers of this court under **Sections 362 and 364** of the Criminal Procedure Code, I find it appropriate to revise and correct the sentence. The applicant of course finds himself between a hard rock and a hard place because this court would not have known about the correctness and legality of his sentence had he not prompted this court through this application. But having noticed the anomaly this court cannot close its eyes or disregard the same. The court's hands are tied when a minimum sentence is prescribed by law.

In the premises, the application to revise the sentence meted out against the applicant to a non custodial sentence is disallowed in view of the above clear provisions of the law. Instead this court shall on its own motion revise the sentence of 4 years handed out to the applicant and set it aside. In its place, the applicant is sentenced to serve 7 years imprisonment which is the minimum sentence provided by law. It is so ordered.

**Dated and delivered at Chuka this 16<sup>th</sup> day of March 2017.**

**R.K. LIMO**

**JUDGE**

**16/3/2017**

Ruling signed dated and delivered in the open court in the presence of Ndombi for the state and Appellant (Armstrong Mwiti Riungu) in person.

**R. K. LIMO**

**JUDGE**

**16/3/2017**