

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL REVISION NO. 32 OF 2013

J K R.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING ON REVISION

1. On 14th March, 2013, **J K R** (hereinafter “the Applicant”) was arraigned before the Nkubu Senior Resident Magistrate’s Court with the **charge of incest** contrary to **Section 21** as read with **Section 20 (1) of the Sexual Offences Act No. 3 of 2006**. It was alleged that on the 22nd May, 2012 at about 1 p.m. at [particulars withheld] sub-location in Imenti South District within [particulars withheld] County, being a male person caused his penis to penetrate the vagina of **R K** who was to his knowledge his step sister.

2. The Applicant denied the charge. After trial, he was found guilty of the offence, was convicted and sentenced to 10 years imprisonment. In his application filed on 21st June, 2013, the Applicant prayed that the sentence be reviewed. The grounds he set out in his application were that his wife had run away and had left two young children behind; that the sentence was excessive in the circumstances of the case and that he was remorseful and repentant.

3. The jurisdiction of this Court for revision is provided for under Section 362 of the Criminal Procedure Code, Cap 75 Laws of Kenya which provides:-

“362. The High Court may 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”.

4. From the foregoing, it is clear that the power of revision is to be exercised for the purposes of this Court satisfying itself of the correctness, legality or propriety of the any finding, sentence or order of the lower court. I have called for and examined the entire record of the trial Court. I have confirmed that the Applicant was permitted to and did cross- examine all the prosecution witnesses. He was likewise given an opportunity to offer his defence and call three (3) witnesses. In my view, the correctness or propriety of the said proceedings cannot be in question.

5. The grounds that the Applicant’s wife disappeared after his conviction and left two (2) young children and that the Applicant is remorseful are no grounds to disturb the sentence. They are accordingly rejected. The other ground was that the sentence was excessive. I note that the Applicant was charged with the offence of incest under Section 21 of the Sexual Offences Act for which he was convicted under Section 20 (1). The minimum sentence provided for under Section 20 (1) of the Act is 10 years. That is the sentence that was metted out to the Applicant. In the circumstances, that sentence cannot be said to be excessive. It is as provided for by law. That ground is also rejected.

6. One issue I noted was that the Applicant was charged under Section 21 which is incest by females. The charge however indicated that that section was to be read with Section 20 (1) which is the correct Section of the law for incest by male persons. The trial Court found that that error did not occasion any prejudice to the Applicant. I agree with the trial Court because, the correct Section was invoked and the information supported the ingredients of Section 20 (1) of the Act. The Applicant seems to have known the nature of

the charge he was facing and duly offered a defence therefor in full. To that extent, no miscarriage of justice was occasioned.

7. Accordingly, the application is without merit. The same is hereby dismissed.

DATED AND DELIVERED AT MERU THIS 6TH DAY OF APRIL, 2017.

A. MABEYA

JUDGE

06/04/2017