



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MOMBASA

MISC. REV. NO. 332 OF 2016

REPUBLIC.....APPLICANT

VERSUS

RASHID NUR.....RESPONDENT

RULING

1. The Appellant was on 19.4.2016 charged with the offence of unlawfully being present in Kenya contrary to section 52 1(i) as read with section 52(3) of the Kenya Citizenship and immigration Act, Act No. 12 of 2011.

2. Upon the charge being read to him in Kiswahili he admitted the charged together with the particulars of the offence. He was then given a chance to mitigate and in his own words he said.

“I pray to leniency, I did not know I was not allowed to photograph. I pray for forgiveness.”

3. In his application for revision lodged by letter dated 25.4.2016 he seeks revision on the grounds that his mitigation to the effect that he had applied for emergency travel documents but failed to collect same but had now got a copy was not considered by the trial court.

4. This court jurisdiction on revision the decisions and processes of the lower court is donated by the provisions of Article 165(6) of the constitution and section 362 of the Criminal Procedure Code.

5. The two provisions read:

Article 165 (6) of the constitution

“The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising judicial or quasi judicial function but not over a superior court.”

Section 362 Criminal Procedure Code

“The High Court may call for and examine the record of any or Criminal proceedings of a subordinate court for the purposes 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 my subordinate court.”

6. I have no doubt in my mind that the purpose of revision as a supervisory jurisdiction of the High Court is to ensure that the lower court in performance of duty adhere to the law as well as the process attendant thereto. As designed under section 362 Criminal Procedure Code, the procedure is intended to be swift and summary and therefore, I hold the view that it is intended to remedy obvious mistakes as to procedure, legality of the charge, finding as well as sentence and could extend to where a trial court proceeds without or in excess of jurisdiction.

7. The application for revision before me does not challenge process nor propriety, legality or the correctness of the charges, conviction or sentence but the allegations that his mitigation was not considered.

8. It is contended that failure to consider mitigation led to the sentence the applicant considers excessive. I note from the proceedings that the facts the applicant now relies upon were never availed before the trial court. The facts of the applicant having applied for emergency travel documents and that he failed to collect the same but now has the same were all held back from the court. In those circumstances I hold the opinion and find that the applicant has not shown that he merits the exercise of discretion in revision being exercised in his favour. For the applicant to succeed, it must be demonstrated and shown from the record that the trial court in arriving at the sentence that it reached, acted upon some wrong principles and short of that, it over looked some relevant factors or facts pertinent to sentencing see **OGALL S/O OWUOR -VS- REPUBLIC 1945JEACA 270.**

9. The provision under which the applicant was sentenced read as follows:

“Section 53(2) Any person convicted of an offence under this section shall be liable upon conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a terms not exceeding three years or to both.”

10. It is clear that only the maximum sentence is imposed hence it was within the trial courts discretion to set any sentence within the parameters set by parliament. She imposed a fine of 100,000 and in default a prison sentence of 12 months. That to me was a legal and modest sentence which in the absence of demonstrated error by the trial court cannot be interfere with.

11. The upshot is that the application for revision has no merit and is therefore dismissed.

Dated, signed and delivered at Mombasa this 7th day of June 2016.

In the presence of:-

No appearance for the Applicant.

No appearance for the Respondent/DDPP.

P.J.O. OTIENO

JUDGE