



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT CHUKA

MISC CRIMINAL APPLICATION NO. 16 OF 2016

PATRICK KIMATHI MURUNGARU.....APPLICANT

- VERSUS -

REPUBLIC.....RESPONDENT

REVISION

1.This is a ruling on the motion dated 3rd October, 2016 by Patrick Kimathi Murungaru. In his application, the Applicant sought that this court do examine the trial court's records in Marimanti Criminal Case Nos. 469 and 485 of 2015, respectively and review the sentences accordingly.

2.Pursuant thereto, this court called for the said records and established as following. That in Criminal Case No. 469/15, the Applicant was charged with the offence of manufacturing Alcoholic drink without licence namely KATHOROKO 80 litres which was not in conformity with the requirement under the Alcoholic Drink Control Act, 2010.

3.The Applicant pleaded guilty. His mitigation was considered and the pre-sentence report was against him. It revealed that he was abusing drugs. He was therefore sentenced to serve 12 months imprisonment without an option of a fine. Having reviewed the proceedings, there is nothing untoward in both the charge, the trial as well as the sentence. The sentence was legal and I therefore decline to review the same. In any event, having been sentenced on 9th September, 2015, that sentence has by now been served in full.

4.As regards criminal case No. 485 of 2015, the Applicant was charged with the offence of assault causing actual bodily harm contrary to section 251 of the Penal Code. It was alleged that on the 20th August, 2015 at Tunyai Location within Tharaka Nithi County, jointly with others not before court, the Applicant unlawfully assaulted Francis Micheni thereby occasioning him actual bodily harm. The Applicant denied the charge and a trial ensued. After the prosecution presented five (5) witnesses, the Applicant was placed on his defence. He gave sworn testimony but was found guilty and convicted accordingly. He was sentenced to pay a fine of Kshs.20,000/- in default to serve six (6) months imprisonment on 16th December, 2015.

5.I have carefully perused the two files and considered the sentences. I find that the proceedings in both files were regular and the sentence lawful.

6.Under section 37 of the Penal Code, the two sentences metted out by the trial court were cumulative. That section provides:-

"37. Where a person after conviction for an offence is convicted of another offence, either before

sentence is passed upon him under the first conviction or before the expiration of that sentence, any sentence, other than a sentence of death, which is passed upon him under the subsequent conviction shall be executed after the expiration of the former sentence, unless the court directs that it shall be executed concurrently with the former sentence or any part thereof;"

7.By virtue of this provision, once the sentence of twelve (12) months for Cr. Case No. 469 of 2015 was concluded on 8th September, 2016, the sentence under Cr. Case No.485 of 2015 commenced. It is for that reason that the Applicant applied that due to his special circumstances which he narrated in his Affidavit in support of the Motion, the sentence in Cr. Case No. 485 of 2015 be revised. The Applicant has indicated that he is a changed man, that he regrets his actions, that he is a student at Embu University College where he had been admitted in 2014. That he had paid fees for the second semester in pursuit of a Bachelor of Education (Science) at that University. He produced a letter of admission to the University dated 6th May, 2014, and receipts for payment of fees which he had made to that institution. He pleaded to be given an opportunity to pursue his education now that he is a reformed prisoner and remorseful for his actions.

8.I have carefully considered the grounds and special circumstances raised by the Applicant. I note that he has already finished the first sentence of twelve months for the first case. He has already served about two (2) months of the second sentence. There are four (4) more months left. If he serves the balance, he may miss the chance of education he yearns for. Under section 364 (1) (a) of the Criminal Procedure Code ("C.P.C"), this court is empowered on revision, to exercise the powers set out in sections 354, 357 and 358 of the C.P.C. Under section 354 (3) (a) (iii) and (b) one of the powers exercisable is to reduce a sentence with or without altering the findings of the trial court .

9.In this regard, having reviewed the subject files and the special circumstances of the Applicant, noting that imprisonment is a punishment metted out to, inter alia, reform an offender, and considering the averment that the Applicant has reformed and needs a chance to continue with his education and he has already served a third of the sentence in Cr. Case No. 485 of 2015, I hereby revise his sentence to the period he has already served.

10.The Applicant should therefore be set free forthwith unless otherwise lawfully held.

DATED and delivered at Chuka this 3rd day of November, 2016.

A.MABEYA

JUDGE

Ruling read and delivered in open court in the absence of the accused although a Production Order had been issued.

A.MABEYA

JUDGE

3/11/2016