Mwangi v Republic (Criminal Revision E306 of 2024)
[2025] KEHC 1336 (KLR) (26 February 2025) (Ruling)

Neutral citation: [2025] KEHC 1336 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MURANG'A

CRIMINAL REVISION E306 OF 2024

CW GITHUA, J

FEBRUARY 26, 2025

BETWEEN

MIKA KARIUKI MWANGI ..... APPLICANT

AND

REPUBLIC ..... RESPONDENT

RULING

1. By a Notice of Motion dated 5th August 2024, the applicant, Mika Kariuki Mwangi sought review of his sentence imposed by the lower court in Kangema Criminal case No. E159 of 2024.

2. A perusal of the trial court's record reveals that the applicant was convicted on his own plea of guilty of the offence of being in possession of narcotic drugs contrary to Section 3(1) as read with Section 4 (a) (ii) of the *Narcotic Drugs and Psychotropic Substances Control* Amendment *Act No.4 of 2022*. He was sentenced to serve two years imprisonment.

3. The applicant now seeks revision of his sentence on grounds that the learned trial magistrate failed to consider his mitigation and sentenced him to a harsh and excessive sentence. He also complained that the learned trial magistrate failed to consider the time he had spent in custody prior to his sentence.

4. During the hearing, in addition to re-iterating his prayer for sentence review, he informed the court that he was selling bhang to earn a living to support his young family. He implored me to revise his sentence by substituting it with a non-custodial sentence.

5. The application was opposed by learned prosecution counsel, Ms. Muriu. In her brief oral submissions, Ms. Muriu asked the court to note that the applicant was not a first offender. She submitted that the trial court exercised its discretion properly in imposing the impugned sentence and the same should not be disturbed.

6. I have considered the application, the brief oral submissions made by both parties in support and in opposition to the application. I have also read the record of the trial court. Having done so, i find that this application invokes the revisional jurisdiction of the High Court which is donated to the court by Section 362 as read with Section 364 of the *Criminal Procedure Code* (CPC).

7. Section 362 of the *CPC* stipulates thus:

> " 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."

8. It is important to state at the outset that it is a settled principle of law that sentencing is always at the discretion of the trial court. For this reason, an appellate court should be slow to interfere with that discretion and must only do so if good cause is established.

9. As a general rule, an appellate court should only disturb a sentence passed by a trial court if it was satisfied that the sentence was illegal or that when passing it, the learned trial magistrate applied wrong legal principles or overlooked some material facts or took into account extraneous factors. The court can also intervene if it was satisfied that the learned trial magistrate otherwise abused his or her discretion or that the sentence was manifestly harsh and excessive in view of the circumstances of the case.

10. The above circumstances in which an appellate court can revise a sentence imposed by the trial court were buttressed by the Court of Appeal in *Macharia V Republic* (2003) KLR 115-118 when it stated as follows:

> " The principle upon which this court will act in exercising its jurisdiction to review or alter a sentence imposed by the trial court have been firmly settled as far back as 1954, in the case of *Ogalo s/o Owuor* (1954) EACA at page 270, wherein the predecessor of this court stated: the court does not alter a sentence on mere ground that if the member of the court had been trying the appellant, they might have passed a somewhat different sentence and it will not ordinarily interfere with the discretion exercised by a trial judge unless as was said in *James v R*, (1950) 18 EACA 147 it is evident that the judge has acted upon some material factors to this we would also add third criterion namely, that the sentence is manifestly excessive in view of the circumstances of the case: *R v Shershewsky* (1912) CCA 28 TLR 364."

11. In this case, the applicant was convicted of the offence of being in Possession of narcotic drugs contrary to Section 3 (1) as read with Section 4 (a) (ii) of the Narcotic Drugs and Psychotropic substances Control Amendments *Act no. 4 of 2022*. This offence attracts a penalty of a fine of not less than fifty million shilling or three times the market value of the narcotic drug or psychotropic substance, whichever is greater, or a term of imprisonment of fifty years, or to both fine and imprisonment.

12. I have perused the records of the trial court. I have noted that although it is not clear whether or not the learned trial magistrate considered the applicant's plea in mitigation given that she did not say so in her pre-sentence notes, it is apparent from the sentence she imposed that she must have considered the applicant's mitigation. The sentence was very lenient given the aggravating circumstances contained in the pre-sentence report availed to the trial court and the penalty prescribed by the law for the offence.

13. There is nothing on record to show that when sentencing the applicant, the learned trial magistrate took into account irrelevant factors or applied wrong legal principles. The sentence was lawful as it was

in accordance with the law save for the learned trial magistrate's failure to comply with Section 333 (2) of the *CPC* which requires that the period a convict had spent in lawful custody must be taken into account during sentencing.

14. In this case, the record shows that the applicant was arrested on 28th February 2024. He initially denied the charges and was released on a cash bail of Kshs. 10,000 on 14th March 2024. The cash bail was forfeited after he jumped bail and he was remanded in custody on 10th June 2024 after he was arrested. He changed plea and was convicted on his own plea of guilty on 9th July 2024. He remained in custody till 18th July 2024 when he was sentenced.

15. The record does not show that when passing sentence, the learned trial magistrate took into account the period of about one month and three weeks the applicant had spent in lawful custody prior to his sentence. This was an error on the trial court's part which should be corrected by this court.

16. In view of the foregoing, the applicant's application partially succeeds to the extent that the period of one month and three weeks that he had spent in lawful custody shall be computed as part of his sentence.

17. It is so ordered.

DATED, SIGNED AND DELIVERED AT MURANGA THIS 26TH DAY OF FEBRUARY 2025.

C. W. GITHUA

JUDGE