



**Kiptui v Republic (Miscellaneous Criminal Application E006 of 2023)
[2024] KEHC 1585 (KLR) (23 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1585 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ITEN
MISCELLANEOUS CRIMINAL APPLICATION E006 OF 2023
JRA WANANDA, J
FEBRUARY 23, 2024**

BETWEEN

SAMUEL KIPTUI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Although the Applicant does not expressly state so, I believe this Court has been moved under its Revisionary jurisdiction as provided under article 165 (6) and (7) of the Constitution.
2. The Applicant approached this Court vide the undated Notice of Motion filed herein on 12/07/2023 seeking the substitution of his sentence with a reasonable fine under section 28 of the Penal Code as read together with section 304 of the Criminal Procedure Code. The Applicant states that he was convicted in Iten CMCR Case No. E172 of 2023 for the offence of manufacturing alcoholic drinks without a license contrary to section 7(i)(a) as read with section 62 of the Alcohol Control Act.
3. The application is premised on the grounds that the applicant is suffering from hypertension and diabetes and as such, his health is deteriorating, that he is married and has 3 children who depend on him as he is the breadwinner and that he is since reformed.
4. Learned State Counsel appearing for the State as the Respondent sought and was granted time to file a Response and Submissions to the Application. However, by the time of concluding this Ruling, I had not come across any such Response or Submissions.
5. The issue that arises for determination in this matter is “whether this Court should exercise its revisionary jurisdiction and substitute, or interfere with, the sentence imposed by the trial Court”.
6. I have not called for the trial court file since upon perusing the Application and considering that this is not an Appeal but simply an Application seeking the exercise of this Court’s discretionary power



of Revision which does not necessarily require perusal of the trial Court file, I trust that the material before me is sufficient to determine this matter. This is also because there is no Response filed by the State.

7. The jurisdiction of the High Court with regard to Revision is supervisory and provided under the Constitution in article 165 (6) and (7) in the following terms:

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

7. For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.”

8. Section 362 of the Criminal Procedure Code, then provides as follows:

“Revision

362. Power of High Court to call for records

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.”

9. The operative phrase in considering Applications for revision is therefore “correctness, legality or propriety” of any finding, sentence or order made by the lower Court.

10. The revisionary jurisdiction of the High Court was examined by Odunga J (as he then was) in the case of Joseph Nduvi Mbuvi v Republic [2019] eKLR as follows:

“In my considered view, the object of the revisional jurisdiction of the High Court is to enable the high Court in appropriate cases, whether during the pendency of the proceedings in the subordinate court or at the conclusion of the proceedings to correct manifest irregularities or illegalities and give appropriate directions on the manner in which the trial, if still ongoing, should be proceeded with. In other words, the High Court’s revisionary jurisdiction includes ensuring that where the proceeding in the lower court has been legally derailed, necessary directions are given to bring the same back on track so that the trial proceeds towards its intended destination without hitches. Not only is the jurisdiction exercisable where the subordinate court has made a finding, sentence or order but goes on to state that it is also exercisable to determine the regularity of any proceedings of any such subordinate court as well.”

11. The operative phrase used by Odunga J above is therefore “to correct manifest irregularities or illegalities”.

12. On his part, Nyakundi J, in Prosecutor v Stephen Lesinko [2018] eKLR outlined the principles that should guide a Court in exercising its reversionary jurisdiction as follows:

a) Where the decision is grossly erroneous;



- b) Where there is no compliance with the provisions of the law;
 - c) Where the finding of fact affecting the decision is not based on evidence or it is result of misreading or non-reading of evidence on record;
 - d) Where the material evidence on the parties is not considered; and
 - e) Where the judicial discretion is exercised arbitrarily or perversely if the lower court ignores facts and tries the accused of lesser offence.
13. In this matter, the Applicant states that he was convicted for the offence of manufacturing alcoholic drinks without a license contrary to Section 7(i)(a) as read with Section 62 of the [Alcohol Control Act](#). I have looked at the said provisions and also the Act generally. Section 62 which is the general penalty provision provides as follows:
- “Any person convicted of an offence under this Act for which no other penalty is provided shall be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.”
14. If as the Applicant states, he was sentenced to 1 year imprisonment, then clearly the trial Magistrate was within his powers and the sentence was lawful. While the Learned Magistrate could have sentenced the Applicant for a period of up to 3 years imprisonment, he only gave 1 year. Regarding the issue of fine, imprisonment with without the option of a fine is also a discretionary power bestowed upon the presiding judicial officer.
15. Regarding the invocation of reversionary powers of the High Court, in the same case of [Joseph Nduvi Mbuvi v Republic](#) (*supra*), Odunga J stated further as follows:
- “14. It is, however my view that the jurisdiction should not be invoked so as to micro-manage the Lower Courts in the conduct and management of their proceedings for the simple reason that if every ruling of the Lower Court and which went against a party were to be subjected to the revisionary jurisdiction of the Court, floodgates would be opened and the Court would be inundated with such applications thus making it practically impossible for the Lower Courts to proceed with any case to its logical conclusion.”
16. It is therefore clear that the revisionary jurisdiction of the High Court should only be invoked where there are glaring acts or omissions but should not be a substitute for an appeal. In other words, parties should not argue an appeal under the guise of a revision. In this case, it has not been demonstrated in any way or even alleged that there were any manifest “irregularities” or “illegalities” or even “arbitrariness” or any “glaring acts or omissions” which this High Court should remedy. The “correctness, legality or propriety” of the sentence has also not been questioned. The Application is basically founded on the basis of sympathy and nothing else. That is not a sufficient ground for this Court to invoke its powers of Revision.
17. In the circumstances, the applicant’s undated notice of motion filed herein on 12/07/2023 is hereby dismissed.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 23RD DAY OF FEBRUARY 2024

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WANANDA J. R. ANURO



JUDGE

