



**Nkunyu v Republic (Petition E013 of 2024)  
[2024] KEHC 14782 (KLR) (22 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14782 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT CHUKA  
PETITION E013 OF 2024  
LW GITARI, J  
NOVEMBER 22, 2024**

**BETWEEN**

**JACOB MUTUMA NKUNYU ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The petitioner has filed this Petition seeking orders that the sentence of ten years imposed by this court be reviewed and substituted with a softer sentence.
2. The background of this matter is that the petitioner was charged in this court on 25/10/2022 with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. It was alleged that on 2/10/2022 at public market Karocho Location within Tharaka Nithi County he unlawfully murdered Telegiria Namia Wanja. The Petitioner denied the charge. The Petitioner offered plea bargaining which was accepted by the State and a plea agreement was filed in court. The Petitioner readily and voluntarily pleaded guilty to a charge of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code. The petitioner was convicted and sentenced to serve ten (10) years imprisonment.
3. The Petitioner has filed this petition based on the grounds that the sentence imposed upon him amounts to a denial of his right to personal dignity as it has totally disenfranchised the applicant's ability to have future prospects. That he was not allowed to mitigate after he pleaded guilty to the charge. That the sentence of ten years was meritorious in view of the aggravating circumstances in the matter and the court observed that a deterrent sentence was called for to those person who commit domestic violence which sadly continues to grow in our communities. The respondent further submits that the court lacks jurisdiction to entertain the petition for the reasons that the applicant's right to personal dignity was not infringed in any manner as the sentence for manslaughter is a maximum of life imprisonment.



4. Secondly, that the court is functus official and lacks jurisdiction to review its own sentence to a lesser sentence. The respondent has urged the court to find that the sentence of ten years is neither harsh nor excessive but was suitable in the circumstances of the case.
5. I have considered the petition. The issue which arises for determination is whether this court has jurisdiction to entertain the petition. The issue of jurisdiction has substantially been dealt with by the Court of Appeal in the case of Owners of Motor “Vessels Lolians S” –v- Caltex Oil (Kenya) Ltd (1989) eKLR where the court addressed the issue of jurisdiction as follows:-

Jurisdiction is everything without it, a court has no power to make one more step. A court of Law down its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

6. This is the reason why the issue of jurisdiction is raised at the earliest stage of the proceedings because anything done without jurisdiction is null and void ab initial. When the issue of jurisdiction is raised in any proceedings it has to be considered and determined before the court can make any move in the matter as it may have the consequences of determining the proceedings if it is argued successfully. I will ensure that the court does not act in vain. Jurisdiction is the authority by which a court has to decide matters that are litigated before it or to the cognizance of the matters present in a formal way for its decision. The limits of this authority are imposed by the Statute, Charter of Commission under which the court is constituted and may be extended or restricted by like means. See John Beecroft Saunders in Words and Phrases legally Defined. Vol 3 Page 113.
7. Thus a court of law must acquire jurisdiction before it makes any move in the matter. The Supreme Court in the matter of Interim Independent Electoral Commission (2011) eKLR Application No.22/2011 stated that jurisdiction of courts in Kenya is regulated by *the Constitution*, Statute and principles laid out in judicial precedent..... a court may not arrogate to itself jurisdiction through craft of interpretation or by way of endeavours to discern or interpret the intention of parliament where the wording of legislation is clear and is without ambiguity.
8. In Mary Wambui Munene –v- Peter Gichuki Kingara and six Others, (2014) eKLR. The Supreme Court stated that, jurisdiction is a pure question of law and should be argued on priority basis. The jurisdiction of this court to hear and determine petitions on the issue whether a right of fundamental freedom in the bill of rights has been denied violated infringed or threatened is donated by Article 165 (2) (b) of *the Constitution* and Article 23.
9. The appellant has submitted that the sentence of ten (10) years amounts to denial of his right to personal dignity. Article 50 (2) of *the Constitution* (9) provides that-

Every person has the right to a fair trial which includes the right- if convicted to appeal to, or apply for review by a higher court as prescribed by law.”
10. The appellant was tried and sentenced by this court. The appellant has the right to file his appeal or application for review to the Court of Appeal under the systems court and Article 50 (2) (g) supra. Article 164 (3) provides that the Court of Appeal shall have jurisdiction to hear appeals from the High Court. The petitioner was charged under Section 202 as read with Section 205 of the Penal Code which provides that-

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- (1) Any person who by an unlawful act or omission causes the death of another person is guilty of the felony termed manslaughter.



- (2) An unlawful omission is an omission amounting to culpable negligence to discharge a duty tending to the preservation of life or health, whether such omission is or is not accompanied by an intention to cause death or bodily harm.”

“205. Any person who commits the felony of manslaughter is liable to imprisonment for life.”

11. The maximum sentence for the offence of manslaughter is life imprisonment. It follows that the sentence imposed on the petitioner was lawful and it follows that his rights were not violated infringed or denied.
12. It is also clear from the record that the petitioner was given an opportunity to mitigate, he gave his mitigation which the court considered before passing sentence. There is an evidence of violation of the rights of the petition and there is no room for this court to review the sentence. Article 165 of *the Constitution* gives the High Court supervisory jurisdiction over the sub-ordinate courts. There is no jurisdiction donated by *the Constitution* of the Statutes for this court to review its own decision.
13. Finally, the appellant was convicted and sentenced after a Plea Bargaining. The Criminal Procedure Code (Cap 75 Law of Kenya provides for the finality of Judgment entered under a plea Agreement. Section 137 L (1) provides:

Subject to subsection (2) the sentence passed by a court under this part shall be final and no appeal shall lie therefrom except as to the extent to legality of the sentence imposed.”

14. The petitioner could only file an appeal on the legality of sentence. The section talks of an appeal and not review. In view of Article 164 (3) of *the Constitution*, the appeal does not lie to this court. Under Section 362 of the Criminal Procedure Code; this court lacks jurisdiction to entertain Petition of revision of its decisions. For these reasons I find that this court lacks jurisdiction to entertain the Petition as filed. The court is functus official. This court must therefore down its tools.
15. I find that this court is Functus Official and lacks jurisdiction to entertain the petition. The Petition is dismissed.

**DATED, SIGNED AND DELIVERED AT CHUKA THIS 22<sup>ND</sup> DAY OF NOVEMBER 2024.**

**L.W. GITARI**

**JUDGE**

