



**Rimoi v Republic (Criminal Review E033 of 2022)
[2023] KEHC 242 (KLR) (25 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 242 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAPENGURIA
CRIMINAL REVIEW E033 OF 2022
JWW MONG'ARE, J
JANUARY 25, 2023**

BETWEEN

RICHARD RIONONGURA RIMOI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. What is before this court is a Notice of Motion filed on 9th November, 2022 where the Applicant is seeking a review of his sentence under sections 362, 364 and 333(2) of the Criminal Procedure Code. The Applicant was convicted of the offence of murder contrary to section 203 as read with section 204 of the penal code in High Court Criminal Case no. 5 OF 2018. He was sentenced to serve 25 years imprisonment on 6th November 2019 at Kapenguria high court by Hon. Sitati.
2. The application is premised on the grounds set out on the face of it and the contents of the affidavit annexed to said application.
3. At the hearing the Applicant's prayed that his sentence be reviewed and revised to enable him go home and take care of his wife who is blind and needs care and attention.
4. Learned Prosecution Counsel for the Respondent opposed the application and submitted that the Appellant has already benefitted from the decision in Muruatetu with his sentence reduction from the mandatory sentence. He can only appeal against the said decision in the Court of Appeal. Further, the court is functus officio.

Issues for Determination

5. The instant application is premised on Section 362 and 364 of the *Criminal Procedure Code*. Section 362 gives the High Court the jurisdiction to call for and examine the record of any criminal proceeding 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. Section 364 on the other hand provides for the powers of the High Court on revision.

6. I have perused the record of the court and it is clear that the Respondent was convicted and sentenced to 25 years imprisonment for the offence of murder, one that carries a mandatory death sentence of death. During sentencing, the trial court considered the mitigation factors and the circumstances under which the offence was committed.
7. The accused approached the court for revision under Section 362 and 364 of the Criminal Procedure Code. Review of sentence under the provisions of the Criminal Procedure Code is not applicable in this case as the Applicant was convicted by this court and therefore, it has no power to review its own sentence under the provisions cited. Further the power to review decisions of subordinate courts or tribunals is one that is conferred to this court by the constitution under article 165 which provides as follows;
 - (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. The essence of revisionary jurisdiction under section 362 as read with section 364 of the Criminal Procedure Code has been considered in several cases. In the case of *Kiwala Vs. Uganda* 1967 EA 758 the court held that:

“Once a case has been revised by the High court becomes functus officio and that the revision is final unless there is an appeal to the court of appeal”
9. If this court were to consider the application for review it would be tantamount to sitting on appeal on its own decision. For the foregoing reasons, I find that the application is not merited and is hereby dismissed. The applicant has the opportunity to move to the Court of Appeal which is the first appellate court in Murder cases and appeal the decision of the high court in which he is dissatisfied.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 25TH DAY OF JANUARY, 2023.

J.W.W. MONGARE

JUDGE

Ruling read in open court in the presence of:

1. Okok – state counsel
2. Applicant – present
3. Juma – Court Assistant

J.W.W. MONGARE

JUDGE

25.01.2023

