



**Mwadime v Republic (Miscellaneous Application E057 of 2022)
[2023] KEHC 19665 (KLR) (29 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 19665 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
MISCELLANEOUS APPLICATION E057 OF 2022**

**GMA DULU, J
JUNE 29, 2023**

BETWEEN

PETER MWADIME APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant filed this an application for sentence review on 20th December 2022 pursuant to Article 50(2) (q) of *the Constitution* and Section 4 of the *Probation of Offences Act* (Cap.64), in which he seeks the following orders:-
 - i. This court be pleased to review his sentence and grant him more lenient sentence pursuant to Article 50(2)(q) of *the Constitution* of Kenya.
 - ii. That the court be pleased to review his sentence and grant him probation orders if his circumstances so fit pursuant to Section 4 of the *Probation of Offences Act* Cap. 64 Laws of Kenya.
 - iii. Any other order that the court deems fit to give in the interest of justice.
2. The application has grounds on its face that applicant was charged with assault contrary to Section 250 of the *Penal Code* in Voi Magistrate’s Criminal Case No. 3 of 2019 and convicted of grievous harm contrary to Section 234 of the *Penal Code* and sentenced to fifteen (15) years imprisonment, that his appeal to the High Court was dismissed and sentence affirmed, that the sentence imposed was manifestly excessive since he was convicted of an offence he was not charged with contrary to provisions of Article 50(2)(b) of *the Constitution*, and that he never lodged an appeal to the Court of Appeal against the High Court decision.



3. The application was filed with a supporting affidavit sworn by the applicant Peter Mwadime on 25th October 2022 which amplifies the grounds of the application and deposes further that this court has jurisdiction to hear and determine this application under Article 165(3)(b) of *the Constitution*.
4. The application was canvassed through written submissions. In this regard I have perused and considered the submissions filed by the applicant, as well as the submissions filed by the Director of Public Prosecutions. Both sides relied on decided court cases. The applicant also filed two certificates on religious instructions received and one certification on completion of a prison project, at bronze level.
5. Though the applicant maintains that this court has jurisdiction to hear and determine this application, the Director of Public Prosecutions has maintained that as the applicant's appeal to the High Court has already determined covering the issue of sentence, this court does not have jurisdiction to entertain this application.
6. The applicant has relied on Article 165(3) of *the Constitution* which grants this court unlimited original jurisdiction in criminal and civil matters. On the other hand, the Director of Public Prosecutions relies on Article 50(2)(q) of *the Constitution* to contend that as an appeal in the same cause has already been determined by the High Court, this court has no further jurisdiction to entertain the present application.
7. For avoidance of doubt Article 50(2)(q) of *the Constitution* which the Director of Public Prosecution relies upon states as follows:-
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(2) Every accused person has the right to fair trial, which includes the right-
(q) if convicted, to appeal to, or apply for review by, a higher court as prescribed by law.
8. In my view, this court's review jurisdiction is circumvented. In criminal cases like the present, it is governed by both Article 50(2)(q) of *the Constitution* above, and the provisions of Section 362, 363 and 364 of the *Criminal Procedure Code* (Cap.75).
9. The circumventing in review matters, restricts the courts jurisdiction to correcting errors made by the subordinate courts, even of a substantive nature. Errors made by this court can only be reviewed by this court, limited to errors made on the face of the record, nothing more.
10. The second type of review which this court can undertake, relates only to mandatory death sentences as reasoned in the *Karioko Muruatetu v Republic* (2017) eKLR case, determined by the Supreme Court, and minimum sentences as reasoned in Machakos High Court Petition E017 of 2021 – Maingi & 5 Others v DPP (2022) eKLR.
11. The present case does not fall within the parameters of a mistake made by a subordinate court, or an error on the face of the record made by the High Court, nor does it relate to mandatory death sentence in murder cases, nor to a minimum sentence.
12. It is a case where the maximum statutory sentence was life imprisonment, and the trial court handed down a sentence of 15 years imprisonment.



13. In my view therefore, this court has no jurisdiction to entertain this application for review of sentence. As was held by Nyaringi JA in the case of *Owners of the Motor Vessel 'Vivian S' v Caltex Oil (Kenya) Ltd* (1989) eKLR.

‘Jurisdiction is everything without it, a court has no power to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. 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.’

14. I thus have to down my tools, and state here that the applicant might have his right to approach the Court of Appeal, but the High court has no jurisdiction to consider a review of its own sentence herein.
15. Having found that this court has no jurisdiction to consider and determine this application, I hold that the application is misconceived and incompetent, and strike out the same. Orders accordingly.

**DATED, SIGNED AND DELIVERED THIS 29TH DAY OF JUNE, 2023 IN OPEN COURT AT VOI.
GEORGE DULU**

JUDGE

In the presence of:-

The applicant

Mr. Sirima for the State

Mr. Otolo court assistant

