



**Wako v Republic (Revision Case E254 of 2022)
[2023] KEHC 21221 (KLR) (27 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 21221 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
REVISION CASE E254 OF 2022
LW GITARI, J
JULY 27, 2023**

BETWEEN

JATTANI WAKO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant has filed a notice of motion which seeks an order that the sentence imposed on him be reviewed downwards. It is based on the facts that the applicant was charged with the offence of rape Contrary to section 3 (1) (a) (c) as read with section 3(3) of the *Sexual offences Act* No. 3 of 2006 and upon conviction was sentenced to serve 20 years imprisonment. He has urged the court to consider his mitigation, rehabilitation and his health status. He further avers that he was a first offender.
2. The respondent opposed the application and urged the court to find that the petitioner was sentenced to serve 20 years imprisonment as provided for in the law. That his appeal to the High court and the Court of Appeal was unsuccessful.
3. The respondent contends that generally under the doctrine of precedents the High Court cannot review decisions of the Court of Appeal as it is a superior court under the hierarchy of court structure as provided for under the *Constitution*. They further contend that section 362 and 364 of the *Criminal Procedure Code* are misplaced as they cannot apply where the applicant had filed appeals in the High Court and Court of Appeal and he cannot be allowed to re-open the case.
4. The respondent further submits that article 165 (6) gives this court power to exercise supervisory jurisdiction over the Sub-ordinate Courts and since the applicant filed an appeal in the Court of Appeal which upheld the conviction and sentence, of the High Court, this court cannot entertain an application to review the sentence.



5. I have considered the application. As submitted by the respondent, the applicant was charged in the Magistrate’s Court where he was convicted and sentenced to serve twenty years imprisonment. The applicant exercised his right under article 50 (2) (q) of the Constitution which provides that every accused has the right to a fair trial, which includes the right-;

(q) if Convicted, the appeal to or apply for review by a higher court as prescribed by the law”

6. He appealed to the High Court and his appeal was dismissed. He then appealed to the Court of Appeal. The court upheld the decision of the High Court and dismissed the appeal. The Court of Appeal considered the sentence which was imposed on the applicant and stated as follows-;

“ As regards the sentence section 3(3) of the Sexual Offences Act provides that “a person guilty of an offence under this section is liable upon conviction to imprisonment for a term which shall not be less than ten years but may be enhanced to imprisonment for life”. The sentence of imprisonment for 20 years is therefore legal.”

7. In my view the Court of Appeal exhaustively considered and determined the legality of the sentence imposed on the applicant. The decision of the court of Appeal binds this court. Article 164 (3) states that-;

“ The court of Appeal has jurisdiction to hear appeals from the High court”

This court is “*functus officio*”. It has no jurisdiction either under article 165 of the Constitution or section 364 of the Criminal Procedure Code to review the sentence. I find that the application is a none starter and lacks merits.

I dismiss the application.

DATED, SIGNED AND DELIVERED AT MERU THIS 27THDAY OF JULY 2023.

HON. LADY JUSTICE L. GITARI

HIGH COURT - JUDGE

