



**Esekon v Republic (Miscellaneous Criminal Application E007 of 2002)  
[2023] KEHC 25868 (KLR) (29 November 2023) (Ruling)**

Neutral citation: [2023] KEHC 25868 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT LODWAR  
MISCELLANEOUS CRIMINAL APPLICATION E007 OF 2002  
RN NYAKUNDI, J  
NOVEMBER 29, 2023**

**BETWEEN**

**LOCHERIA ESEKON ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant approached this court vide an application dated 28<sup>th</sup> February 2022 seeking review of his sentence. He was charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code* in Lodwar High Court Criminal Case No. 6 of 2016. The court heard his case and reduced his charge to manslaughter and sentenced him to 15 years' imprisonment on 17<sup>th</sup> November 2017 by Hon. S. Riechi.
2. The application is premised on the grounds that he is a first offender, the sole breadwinner of his family, remorseful and fully reformed.

**Analysis & Determination**

3. Upon considering the application, the following issues emerge for determination;

**Whether the court has jurisdiction to review the sentence**

4. The High Court's power of revision is set out in article 165 which provides:-
  - (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 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.



5. Section 364(1) of the Criminal Procedure Code provides:-

In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders or which otherwise comes to his knowledge, the High Court may”-

- (a) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by section 354, 357 and 358, and may enhance sentence;
  - (b) In the case of any other order other than an order of acquittal alter or reverse the order.
- (2) No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence.

6. The revisionary jurisdiction of the High Court can only be exercised where one seeks revision of a decision of a subordinate court. The law abhors that practice of a judge sitting to review a judgment or decision of another judge of concurrent jurisdiction as a case ought to be handled procedurally in the right forum. As a rule, superior courts cannot sit in review/appeal over decisions of their peers of equal and competent jurisdiction much less those courts higher than themselves. Further, section 364(5) of the Criminal Procedure Code states;

5) When an appeal lies from a finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed.

7. In the premises, this court has no jurisdiction to entertain the application and must down its tools. The application is dismissed in its entirety under section 382 of the [criminal procedure code](#) and article 50 (6) (a) & (b) of [the constitution](#).

**DELIVERED, DATED AND SIGNED AT LODWAR ON THIS 29<sup>th</sup> DAY OF NOVEMBER, 2023**

**And in the presence of;**

Mr. Kakoi for the state

Applicant in person

.....

**R. NYAKUNDI**

**JUDGE**

