



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT GARISSA**

**MISC APPLICATION NO. E016 OF 2020**

**MOHAMMED ABDILLE HAMUD.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGEMENT**

1. The applicant herein was found guilty of being in possession of ammunition without holding a firearm Certificate in force at the time contrary to **section 4 (2) (a) as read with Section 4 (3) of the Firearms Act** and being in possession of a Firearm without holding a firearm license in force at the time contrary to Section 4 (1) of the Firearms Act.
2. The trial court sentenced the applicant to seven (7) years imprisonment on Count I and 14 years imprisonment on Count II. The sentences were to run concurrently.
3. The appellant has now approached this court seeking an alternative sentence. He urged the court to consider that the trial court did not factor in that he was a first-time offender.
4. The respondent opposed the application through grounds of opposition dated 27<sup>th</sup> July 2016. The Respondent opined that the applicant had challenged the trial court proceedings vide *High Court Criminal Appeal Number 13 of 2019 Mohamud Abdille Hamud versus Republic* where the appeal was dismissed. The Respondent therefore urged the court to find the application being unmerited dismisses the same.
5. In his submissions the applicant mitigated, claimed that he is aged 25 years old; a first offender and he will not repeat the offence again.
6. On its part the respondent submitted that the applicant's appeal on both the sentence and conviction had already been determined by this court in High Court Criminal Appeal Number 13 of 2019 and therefore this court does not have jurisdiction to entertain the same issue again. The respondent cited the cases of **John Kamau Gachuha versus Republic [2019] eKLR & Raila Odinga & 2 Others v independent Electoral & Boundaries Commission & 3 Others [2013] eKLR.**

**Analysis and Determination**

7. I have considered the application, the written submissions and the authorities cited. The main issue is *whether this Honourable Court has jurisdiction to determine the application and whether the applicant warrants the Orders sought.*
8. It is not in dispute that having been aggrieved by the judgement of the trial court the applicant appealed to this court and the appeal heard and determined.

**In John Kamau Gachuha v Republic [2019] eKLR** the Court held as follows;

**“... The applicant merely seeks the imposition of a more lenient sentence. This court has no revision jurisdiction over an appeal it has concluded. The applicant's only option is to appeal in the Court of Appeal...”**

**In John Kagunda Kariuki v Republic [2019] eKLR** the Court held as follows;

**“In the present case, the Applicant's appeal has already been heard by the High Court. He cannot return to the High Court for a review of the sentence imposed. He is at liberty to make an argument for reduced sentence at the Court of Appeal...”**

9. The only remedy thus available to the Applicant now lies with the Court of Appeal should the applicant feel aggrieved by this Court's determination on appeal. This court does not have jurisdiction to determine the issues raised in the application for a second time.

It then follows that the application filed on 29<sup>th</sup> December 2020 lacks merit and the same is hereby dismissed.

**DATED SIGNED AND DELIVERED THIS 27<sup>TH</sup> DAY OF JANUARY 2022**

**ALI-ARONI**

**JUDGE**