



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIVASHA

MISCELLANEOUS CRIMINAL APPLICATION NO. E133 OF 2021

ARON MIKE KIPROP.....APPLICANT

-VERSUS-

REPUBLIC.....RESPONDENT

RULING

1. The Applicant herein was charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code** in ***Naivasha High Court Criminal Case No. 3 of 2019***. After a Plea Bargaining Agreement, he pleaded guilty to a lesser charge of manslaughter and was consequently sentenced to fifteen (15) years imprisonment on 7th October, 2019 by Hon. Mwongo J., with the last five years being suspended. The result was that he was to serve 10 years imprisonment from 7th October, 2019.
2. The Applicant has now approached this court vide a Chamber Summons received into court on 29th June, 2021. He seeks a review of the said sentence to probation or acquittal.
3. The application is supported by the Applicant's Affidavit sworn on 5th March, 2020. The Applicant's case is that he engaged an advocate after conviction only to be informed that he had appealed out of time. He avers that he has served 9 years so far and has reformed to the extent that he was enlisted in the presidential pardon list but he does not know how far that went. He also states that he has on several occasions requested the prison department to release him but they advised him to file the instant application. Lastly, he urges the court to grant the order sought in the interest of justice.
4. In what he referred to as a 'Memorandum of Revision' filed on 29th June, 2021 the Applicant cited, *inter alia*, the following grounds that would warrant the review of his sentence: That; he pleaded guilty, he is not appealing against conviction and sentence but applying for review of sentence, he is a first offender, he is completely remorseful and a law abiding citizen, he is from a poor family background and sole breadwinner of his family and the (9) nine months he spent in remand custody be considered in to constitute part of the sentence.
5. In his oral submission, the Applicant reiterated the same grounds set out in the supporting affidavit. He also hopes to reconcile with the members of the deceased's family.
6. Ms. Maingi for the Respondent opposed the application. She submitted that the Applicant having been charged with murder pleaded guilty to manslaughter before Mwongo J. That his mitigation as well as the probation report was duly considered. She stated that the wording in the judgment in sentencing is unequivocal as the sentence was to start running from the date of incarceration.
7. The sole issue for determination herein is whether the Application is merited. To begin with, the jurisdiction of this court is provided for under **Article 165** of the **Constitution** and includes unlimited original jurisdiction in criminal and civil matters; jurisdiction to enforce bill of rights; appellate jurisdiction; interpretive jurisdiction; any other jurisdiction, original or appellate conferred on it by any legislation; and 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. The said Article does not clothe this court with a jurisdiction to review a decision of a court of concurrent jurisdiction. Further, the revisionary jurisdiction of this court under **Sections 362 and 364** of the **Criminal Procedure Code** is only limited to proceedings from subordinate courts.
8. The sentence which the Applicant now seeks to review was imposed by a court that has concurrent jurisdiction with this court. It is clear from the judgment of the court that mitigation was ably considered against a backdrop of a Probation Officer's Report. Revisiting the mitigation issue would imply that I am reviewing a sentence that was imposed by a court of concurrent jurisdiction.
9. That means that this court cannot therefore review the said sentence as doing so would amount to sitting on appeal against the decision of a court of concurrent jurisdiction which is unacceptable under the law. In my view, this court became *functus officio* the moment Hon.

Mwongo J. pronounced himself on the sentence and the only recourse that the Applicant was left with at that point was to move the Court of Appeal which is clothed with the jurisdiction to hear appeals from the High Court under **Article 164(3)** of the **Constitution** and **Section 379(1)** of the **Criminal Procedure Code**.

10. In the upshot, I find that the Applicant's application dated 29th June 2021, lacks merit. The same is dismissed.

DATED AND DELIVERED AT NAIVASHA THIS 24TH DAY OF FEBRUARY, 2022.

G. W. NGENYE-MACHARIA

JUDGE

1. Applicant in person.
2. Ms. Kirenge for the Respondent.