



**Kipkotot v Republic (Constitutional Petition E002 of 2021)
[2022] KEHC 10254 (KLR) (30 June 2022) (Judgment)**

Neutral citation: [2022] KEHC 10254 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CONSTITUTIONAL PETITION E002 OF 2021**

**WK KORIR, J
JUNE 30, 2022**

BETWEEN

ELIJAH KOMOLIT KIPKOTOT PETITIONER

AND

REPUBLIC RESPONDENT

JUDGMENT

1. The Petitioner, Elijah Komolit Kipkotot, through an undated application filed in Court on October 27, 2021 seeks a review of his prison sentence.
2. The State through the Director of Public Prosecutions (DPP) opposes the application.
3. The applicant's case is premised on article 50(2) (p)&(q) of the Constitution. His case is that article 27(1), (2) & (4) of the Constitution does not discriminate on matters of sentencing and he is entitled to be given a non-custodial sentence or community service order having been in prison for a long period of time.
4. The undisputed facts of the case disclose that the Petitioner was tried, convicted and sentenced to serve 20 years in prison for the offence of defilement of a child contrary to section 8(1) as read with section 8(3) of the Sexual Offences Act, 2006 in Kabarnet PMC Sexual Offence Case No. 22 of 2017. His appeal to this court against conviction and sentence through Kabarnet HCCRA No. 222 of 2017 was dismissed on July 24, 2019 in its entirety.
5. In the application, the petitioner seeks leniency stating that he is a first offender, remorseful, repentant, saved and has acquired various skills including schooling which will enable him cope with the society. He also relies on sections 213, 216, 329, 364, 354, 362 365 of the Criminal Procedure Code as well as articles 27(1), (2) & (4), 22(1), 23(1), 25c, 50(1)(2), 51(1)(c), 159, 165 and 258(1) of the Constitution. The petitioner additionally relies on the Sentencing Policy Guidelines published by the Kenyan Judiciary in 2016.



6. The petitioner avers that his application for resentencing is also based on a Supreme Court authority which allows courts to interfere with sentences subject to mitigation. The citation of the said Supreme Court decision is, however, not provided.
7. In his submissions filed on April 25, 2022, the petitioner rejects the DPP's contention that this court lacks jurisdiction and power to hear and determine the matter because it had already dismissed his appeal. The petitioner relies on article 165(1) of the Constitution as empowering this Court to hear any question respecting the interpretation of the Constitution. According to the petitioner, the only limitation placed on the jurisdiction of this court is that found in article 165(5)(a) & (b) and the limitation is not applicable to his petition.
8. The respondent opposed the petition through submissions dated February 2, 2022. The respondent's case is that this court lacks jurisdiction to review its own orders which it made in the Petitioner's appeal. Section 364(5) of the Criminal Procedure Code is relied on as providing that when an appeal lies from a finding, sentence, or order, and no appeal is brought, no proceedings by way of revision shall be entertained at the instance of the party who would have appealed. The decisions of *R v Sironga and Minto Hamilton* [1918] 7 KLR 148 and *Michael S/o Meshaka v Republic* [1962] EA 81 are cited in support of the submission that this court has no jurisdiction to revisit and review the judgement made in respect to the Petitioner's dismissed appeal to this Court.
9. Finally, the respondent submits that the petitioner was sentenced to the minimum sentence provided by the law. The court is therefore urged to dismiss the petition.
10. I have looked at all the provisions of the Constitution and the Criminal Procedure Code cited by the petitioner in his petition for resentencing and I do not find any authority granted to this court by any of those provisions to review the judgement delivered by this court (Edward M. Muriithi, J) on July 24, 2019. The Petitioner has not alleged that the proceedings that led to his conviction by the trial court and the minimum sentence of twenty years were unconstitutional. The petitioner has not met the conditions for review of a court's own judgement or order as set by the Supreme Court in Fredrick Otieno Outa v Jared Odoyo Okello & 3 others [2017] eKLR. The petitioner did not cite the Supreme Court decision which he claims allows this court to resentence him. I will therefore not speculate on the decision he is referring to.
11. I am alive to the recent decision in Machakos High Court Petition No. E017 of 2021 Philip Mueke Maingi & 5 others v Director of Public Prosecutions & another. I only wish to state that the petition before me was filed and heard prior to decision and the parties have not based their arguments on that case.
12. In short, the petition is not supported by any of the constitutional or statutory provisions cited by the petitioner. I agree with the holding in Abiud Muchiri Alex v Republic [2020] eKLR that "this court lacks jurisdiction to revise its own orders regarding sentence." The instant petition is therefore found to be without merit and dismissed.

DATED, SIGNED AND DELIVERED AT KABARNET THIS 30TH DAY OF JUNE, 2022.

W. KORIR,

JUDGE OF THE HIGH COURT

