



REPUBLIC OF KENYA



KENYA LAW
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**Kamau v Republic (Criminal Revision E080 of 2022)
[2022] KEHC 13307 (KLR) (Crim) (27 September 2022) (Ruling)**

Neutral citation: [2022] KEHC 13307 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL
CRIMINAL REVISION E080 OF 2022**

**DO OGEMBO, J
SEPTEMBER 27, 2022**

BETWEEN

ANTHONY KARIUKI KAMAU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant, Anthony Kariuki Kamau, has petitioned this court by way of a notice of motion application filed herein on April 28, 2022. The application, brought under section 333(2) of the *Criminal Procedure Code*, seeks revision of the sentence. That the sentence ought to take into account and take effect from the period of arrest.
2. In opposing the application, Mr Kiragu for the state submitted that this court lacks jurisdiction over this matter as the sentence was of a Judge (Hon Justice Lesiit) of concurrent jurisdiction.
3. I have considered the submissions of both sides. Since an issue of jurisdiction has been raised in opposing this application, it is imperative that this court do consider this issue before it can venture into the merits of this application.
4. It is clear from the record of the proceedings that the applicant faced a charge of murder contrary to section 203 as read with section 204 of the *Penal Code*. Upon entering a plea bargaining, the applicant pleaded guilty to the lesser charge of manslaughter contrary to section 202 as read with section 205 of the *Penal Code*. This was on February 6, 2019. The applicant was on March 28, 2019, sentenced to served 6 years imprisonment.
5. In the sentence proceedings of even date, the court clearly took into account the mitigation of the applicant including the period he had taken in custody pending his trial. The court also considered



the detailed probation officers report on the applicant. Lastly, the court also considered the relevant sentence for the offence of manslaughter, i.e imprisonment for life.

6. In *Samwel Kamau Macharia Versus KCB & 2 others*, Civil Application No 2 of 2011, the court of appeal held;

“A court’s jurisdiction flows from either the Constitution or legislation or both. Thus a court can only exercise jurisdiction as conferred by the constitution or other written law. It cannot arrogate itself jurisdiction exceeding that which is conferred upon it by law.”

7. Article 165 of the constitution declares the jurisdiction of the High Court. Nowhere in this constitutional provision is a Judge conferred with jurisdiction to reconsider, alter and or revise any order or finding of a Judge of concurrent Jurisdiction. And no statute confers any such jurisdiction. And the reasoning behind this is simple. That the supervisory jurisdiction of the High Court is only with regard to subordinate courts and not court of concurrent or superior jurisdiction.
8. By this application, the applicant seeks that this court revises the orders issued by the Hon Justice Lesiit, a Judge of concurrent jurisdiction on March 28, 2019. As seen above, doing so would both be unconstitutional and illegal. Consequently, for lack of jurisdiction, this application of the applicant filed herein on April 28, 2022 fails. The same is wholly dismissed.

D. O. OGEMBO

JUDGE

27TH SEPTEMBER 2022

Court:

Ruling read out in open court in the presence of the applicant (Nairobi West Prison) and Ms. Joy for the state

D. O. OGEMBO

JUDGE

27th SEPTEMBER 2022.

