



**Makhoha v Republic (Miscellaneous Criminal Application  
46 of 2020) [2022] KEHC 16983 (KLR) (20 December 2022) (Ruling)**

Neutral citation: [2022] KEHC 16983 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIVASHA  
MISCELLANEOUS CRIMINAL APPLICATION 46 OF 2020  
GWN MACHARIA, J  
DECEMBER 20, 2022**

**BETWEEN**

**GEORGE JUMA MAKHOHA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

**RULING ON REVISION OF SENTENCE**

1. The applicant herein is approaching this court a second time. He faced 4 counts of stock theft on different dates. He was sentenced by the Magistrate's Court to serve 3 years imprisonment on each of the counts, meaning a total of 12 years.
2. Attached to this file is High Court file in Criminal Appeal No 6 of 2017 in which the applicant appealed the decision of the trial court. What I glean from the brief hand-written judgment of Mwongo, J dated September 25, 2018 is that the applicant pursued the appeal only against the sentence and the same was dismissed. The import of this judgment is that the applicant could thereafter only approach the Court of Appeal to challenge the decision of Mwongo, J. He did not. Instead, he now asks the court to once again further review the sentence by ordering that the sentences run concurrently or that the period he was in remand custody be considered pursuant to section 333(2) of the [\*Criminal Procedure Code\*](#).
3. In essence, what the applicant is asking the court to do is to sit on appeal over the judgement of Mwongo, J which is untenable. Mwongo, J is a judge of a court of concurrent jurisdiction to me and so the only recourse that the (applicant) has, is to appeal Mwongo J's judgment in the Court of Appeal.



4. I am persuaded by the case of *Daniel Otieno Oracha v Republic [2019] eKLR* where the petitioner had applied for review of a sentence imposed by a court of concurrent jurisdiction and the court observed that:

- “ 14. The law abhors that practice of a judge sitting to review a judgment or decision of another judge of concurrent jurisdiction. Reduction of sentence could only be considered by the Court of Appeal or if this court was sitting on appeal of a judgment of the subordinate court or if the petitioner was seeking for resentence after exhausting appeal mechanisms and not otherwise.....
16. The judgment of Abida Ali-Aroni J made in accordance with the law has not been challenged. This court cannot sit on appeal of its own judgment or of court of concurrent competent jurisdiction when the Petitioner had an opportunity to ventilate his grievance before the Court of Appeal even if it was to challenge sentence alone.
17. Good governance demands that cases be handled procedurally in the right forum. This is because the rule of the thumb that superior courts cannot sit in review/appeal over decisions of their peers of equal and competent jurisdiction much less those courts higher than themselves and that matters falling under the exclusive jurisdiction of Supreme Court under article 163(3) cannot be dealt with by the High Court.....”

5. Further, in *John Kagunda Kariuki v Republic [2019] eKLR*, Ngugi J held as follows.

“..persons whose appeals have already been heard by the High Court are not entitled to file fresh applications for re-sentencing in accordance with the new decisional law. To reach a different conclusion would lead to an ungovernable situation where all previously sentenced prisoners would seek review of their sentences.”

6. I need not therefore, delve into the applicant’s submissions. His application fails and the same is dismissed accordingly.

**DATED AND DELIVERED AT NAIVASHA THIS 20<sup>TH</sup> DECEMBER, 2022.**

**G W NGENYE-MACHARIA**

**JUDGE**

**In the presence of:**

1. Applicant in person.
2. Mr Michuki for the Respondent.

