



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CRIMINAL REVISION NO. E021 OF 2020

STEPHEN KATHURI KIMOTHO.....1ST APPLICANT

STELLA NJOKI MWANGI.....2ND APPLICANT

PETER IRERI KIMOTHO.....3RD APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. Before this court is the application dated 1.12.2020 wherein the applicants seek review of their sentences. It is their case that they were convicted of the offence of murder in Embu High Court's Criminal Case No. 24 of 2009 and were sentenced to suffer death. That they appealed to the Court of Appeal via Criminal Appeal No. 33 of 2013- Nyeri and whereby the death sentence was substituted with life imprisonment. It is this sentence which they seek review of.

2. The basis of their review is, amongst others, that they have exhausted all avenues of appeal hence this application for their sentence review under Article 50(2)(q) of the Constitution and Section 362 and 364 of the Criminal Procedure Code. They aver that they are entitled for guaranteed benefit of the law under Article 27(1) (2)(4) of the Constitution and that being first offenders, they are entitled and qualified for the least severe punishment as enshrined in Article 50(2)(q) of the Constitution.

3. The applicants filed their respective written submissions and which they relied on in canvassing the application. However, Ms. Mati for the respondent opposed the application on the grounds that this court lacks jurisdiction to entertain the application since the applicants were charged with murder and as such the court cannot revise its own decision. That, their recourse ought to be in appeal. She further submitted that the applicants had filed another petition being **Petition Number 38 of 2019** which they should appeal against, in the Court of Appeal.

4. I have considered the application and the rival submissions by the parties herein.

5. The applicants averred that they have exhausted the avenues of appeal. It is their admission that their appeal to the Court of Appeal was dismissed. Ms. Mati brought to the attention of the court the fact that there was an earlier petition being **Petition Number 38 of 2019** and wherein they sought resentencing on the application of the principles in **Muruatetu's case**. These averments were never controverted by the applicants. The court has confirmed that the applicants herein had filed the said **Petition No. 38 of 2019** and in a ruling delivered on 9.06.2020, Justice Muchemi dismissed the same for want of jurisdiction.

6. It is my view that the application herein is an abuse of the court process as Justice Muchemi and this court are courts of concurrent jurisdiction and this court cannot review a decision of a court of concurrent jurisdiction. As Ms. Mati rightfully submitted, the recourse available to the applicants is to appeal against the said ruling to the Court of Appeal as it is the one with jurisdiction under article 164(3) of the Constitution and Section 379(1) of the Criminal Procedure Code and in appreciating the provisions of Article 50(2)(q) of the Constitution of Kenya 2010 which guarantees the right of a person if convicted, to appeal to, or apply for review by, *a higher court* as prescribed by the law.

7. As I have noted, the applicants aver that the basis of their application is that they have exhausted all avenues of appeal. However, it is my view that the revisionary jurisdiction bestowed on this court by virtue of Section 362 and 364 is limited to review of judgments from subordinate courts. This court cannot invoke the said jurisdiction and review decision of a court of concurrent jurisdiction.

8. It is trite that courts can only exercise jurisdiction as conferred by the constitution or other written law and cannot arrogate itself jurisdiction exceeding that which is conferred upon it by law, and that a court cannot expand its jurisdiction through judicial craft. (See **Samuel Kamau Macharia & Another V. KCB & 2 Others App. No. 2/2011**). Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A Court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction. (See **the owners of Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] eKLR**).

9. Considering all the above, this court is bereft of jurisdiction to issue the orders sought by the applicants and ought to down its tools. As such, the petition herein is dismissed for want of jurisdiction.

10. It is so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 17TH DAY OF MARCH, 2021.

L. NJUGUNA

JUDGE

.....*for the Applicants*

.....*for the Respondent*