



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

CRIMINAL REVISION NO. 138 OF 2020

EPHANTUS MUGENDI NDWIGA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. This ruling is in relation to the application dated 17.11.2020 and wherein the applicant seeks review of the sentence meted on him by the trial court.
2. The applicant deposed that he was convicted of the offence of murder contrary to Section 203 as read together with section 204 of the Penal Code in Embu High Court Criminal Case No. 4 of 2016 and sentenced to thirteen (13) years imprisonment. That, however, he did not appeal against the said conviction and sentence but has approached this court for review of the said sentence on the basis that the applicant being a first offender was constitutionally guaranteed, entitled and qualified for the benefit of the law under Article 25(c), 27(1)(2), 50(2)(p) of the Constitution, and which were offended by the court in failure to apply Section 216 and 329 of the Criminal Procedure Code before imposing the sentence and which amounted to discrimination, that if the victim report was considered, the court would have arrived at a lenient sentence, that the applicant is a first offender and is qualified for a lenient sentence.
3. At the hearing of the application, the applicant prayed for review of the sentence as he pleaded to a lesser charge of manslaughter. Ms. Mati for the respondent opposed the application on the basis that this court is bereft of jurisdiction to do revision as the sentence was imposed by the High Court. The applicant in a rejoinder prayed for reduction of the sentence by three (3) years.
4. The application was canvassed orally wherein the applicant urged the court to take into account the time spent in custody. Ms. Mati for the state submitted that the applicant had not proved that the sentence imposed on him was illegal as is the requirement of the law under which the application was brought and that the sentence was lenient.
5. I have considered the application herein and the oral submissions made by the parties. As I have already noted, Ms. Mati raised an issue as to the jurisdiction of this court to entertain the application. Being a jurisdictional issue, this court ought to determine the same *in limine*. The issues for determination therefore are whether this court has jurisdiction to consider the application herein and if so, whether the same is merited.
6. I have perused the court record and I note that indeed the applicant was charged with the offence of murder in Embu High Court Criminal Case No. 4 of 2016 and wherein he pleaded not guilty. However, he entered into a plea bargaining agreement and the charge was substituted with that of manslaughter and to which charge he pleaded guilty. He was then sentenced to serve thirteen (13) years imprisonment. The court which sentenced the applicant (Hon. Muchemi J) and this court are both High Courts and thus courts of concurrent jurisdiction. It is this sentence which the applicant wants reviewed.
7. It is now trite that a court of law can only exercise jurisdiction as conferred by the constitution or other written law. It cannot arrogate to 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**).
8. The jurisdiction of the High court is provided for under **Article 165(3) of the Constitution** and includes *unlimited original jurisdiction in criminal and civil matters; jurisdiction to enforce bill of rights; appellate jurisdiction; interpretative jurisdiction; and any other jurisdiction, original or appellate, conferred on it by legislation*. The High court further *has supervisory jurisdiction* over subordinate courts donated by Article 165(6) of the Constitution. This jurisdiction is expounded under Sections 362 and 364 of the Criminal Procedure Code.
9. In my view, there is no law which bestows this court with jurisdiction to review a decision by a court of concurrent jurisdiction and/or its own decision. The applicant herein having been sentenced by Hon. Muchemi J, this court is bereft of jurisdiction to revise the said sentence.

If the appellant is not satisfied with the said sentence or if for any reasons he feels that the court ought to have considered other issues but which it did not, the same can only be canvassed in the Court of Appeal as it is the said court which has jurisdiction to review a judgment of the High Court in exercise of its appellate jurisdiction as bestowed on it by Article 164(3) of the Constitution and Section 379(1) of the Criminal Procedure Code).

10. By reviewing the said sentence, this court would arrogate itself the appellate jurisdiction to entertain an appeal from its own decision or decision of a court of concurrent jurisdiction. The law abhors that practice of a judge sitting to review a judgment or decision of another judge of concurrent jurisdiction. Good governance demands that cases be handled procedurally in the right forum. This is because of the rule of the thumb that superior courts cannot sit in review/appeal over decisions of their peers of equal and concurrent jurisdiction much less those courts higher than themselves. (See **Daniel Otieno Oracha –vs- Republic [2019] eKLR**). It is my view that this court and the court which heard the appeal being courts of concurrent jurisdiction, this court is devoid of any jurisdiction to review the said decision.

11. For the above reasons and for want of jurisdiction, as it was held in **the Owners of Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] eKLR**, this court ought to down its tools, for, without jurisdiction, a court of law acts in vain.

12. Accordingly, the application is hereby dismissed.

13. It is so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 30TH DAY OF JUNE, 2021.

L. NJUGUNA

JUDGE

.....for the Applicant

.....for the Respondent