



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL DIVISION**

**CRIMINAL REVISION CASE NO. 52 OF 2019**

**LESIT, J.**

**GEORGE KIARIE NGERERE.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

(Being an application for review of sentence from the decision of this court (Lesit, J) in High Court Criminal Case No. 26 of 2015 delivered on 19<sup>th</sup> July 2018)

**RULING ON REVIEW**

1. The Applicant filed a Notice of Motion filed on 28/2/19. The Motion does not set out what is being sought in the application but also refers to an affidavit sworn in support of the application.
2. I have seen the affidavit. It seems to set out factors that should be considered before sentencing. What catches my eye is the averment that the Applicant spent 3 years 6 months in custody and that that should be deducted from his sentence.
3. Ms Ogweni Learned Prosecution Counsel for the State brought the attention of the court to the fact that this court was the one which passed the sentence against the Applicant, which was the subject of the application. Counsel urged that all the matters raised by the Applicant were in fact considered by the court before passing sentence.
4. The Applicant was the accused before me in High Court Criminal Case No. 26/15. He faced a charge of **murder** contrary to **section 203** of the **Penal Code**. After the trial, I convicted the Applicant of manslaughter and proceeded to sentence him to six years' imprisonment, after taking mitigation from him.
5. In a poorly drafted application which does not invoke any law, nor spell out orders sought to be made, he has returned before me. If my understanding is right, he seems to seek to have his sentence re-visited by the court, expects a deduction of the term of sentence, and writes the court in his affidavit to give a non-custodial sentence.
6. The Applicant had a right of appeal against the conviction entered herein and also the sentence. It is not clear whether he filed any appeal to the Court of Appeal. That is where the issues raised in the affidavit and the Notice of Motion should be addressed.
7. No law allows a court to sit on appeal over its own decision. And in criminal cases, a court cannot meddle with an order in sentence it pronounced against an accused before it, except in cases governed by the Guiding Judgement of the **Supreme Court in Muruatetu and Anor. Vs Republic Petition No. 15 of 2016**. This case does not fall under the **Muruatetu**, supra, judgment.
8. The application is incompetent and cannot stand. The same is struck out accordingly.

**DATED AT NAIROBI THIS 28<sup>TH</sup> DAY OF MAY, 2021.**

**LESIT, J.**

**JUDGE**

**DATED, SIGNED AND DELIVERED THIS 29TH DAY OF JUNE, 2021.**

**BY**

**OGEMBO, D.O.**

**JUDGE**

**29/6/2021**

**Court**

Ruling read out in court (on-line) in presence of the applicant (Nairobi West Prison) and Mr. Mutuma for the State.

**OGEMBO, D.O.**

**JUDGE**

**29/6/2021**