



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CRIMINAL REVISION NO. E025 OF 2020

SALESIO NYAGA NAMU.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. Before me is a review application dated 18.12.2020 and wherein the applicant seeks review of the sentence he is serving.
2. The applicant's case is that he was initially charged with 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. 6 of 2018. However, pursuant to a plea bargaining agreement, he was convicted of the offence of manslaughter contrary to Section 203 as read together with Section 205 of the Penal Code and sentenced to ten (10) years imprisonment.
3. The applicant now moves this court seeking review of the said sentence and urges this court to consider the application of Section 216 and 329 of the Criminal Procedure Code as the same was not considered during the imposition of the current sentence and further consider that the mitigation by the applicant to the effect that he was a first offender and thus he was entitled to the least punishment.
4. The applicant filed his written submissions which he relied on. In canvassing the application, he submitted that he is constitutionally entitled to the least severe sentence and further, invited the court to reconsider the application of Section 216 and 329 of the Criminal Procedure Code. Ms. Mati for the respondent submitted that the sentence imposed by the court was reasonable and further that the applicant did not show how his rights have been violated. In a rejoinder the applicant prayed for a non-custodial sentence.
5. I have considered the application, the applicant's submissions and further the oral submissions on behalf of the respondent.
6. The applicant averred that he was convicted for the offence of manslaughter in Embu High Court Criminal Case No. 6 of 2018. I have indeed perused the court record and I note that the applicant herein was convicted in the judgment delivered on 27.11.2018 by Hon. F. Muchemi J. upon mitigation offered on his behalf by his counsel (Ms. Migwi), he was sentenced to ten (10) years imprisonment.
7. It is this sentence that the applicant seeks this court to review and which is a judgement or orders of a court of concurrent jurisdiction.
8. The jurisdiction of this 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, supervisory jurisdiction and any other jurisdiction, original or appellate, conferred on it by legislation. Under the said article, this court does not have jurisdiction to review/revise a decision of a court of concurrent jurisdiction. The revisionary jurisdiction of this court is only limited to proceedings of subordinate courts (see section 362-365).
9. The trial court herein (Hon. Muchemi J) was a court of concurrent jurisdiction with this court. What the applicant is seeking therefore is for this court to review the decision of a court of concurrent jurisdiction. It is my view that in the circumstances herein, this court is bereft of any jurisdiction to review the said decision as doing so would be tantamount to sitting as an Appellate court on the judgment of Hon. F. Muchemi J. The law abhors that practice of a judge sitting to review a judgment or decision of another judge of concurrent jurisdiction and a case ought to be handled procedurally in the right forum. As a rule, superior courts cannot sit in review/appeal over decisions of their peers of equal and competent jurisdiction much less those courts higher than themselves.
10. In my view, the applicant ought to have appealed against the judgment and/or sentence to the Court of Appeal as this court became *fictus officio* once it (Muchemi J) delivered the judgment subject of the application herein. The Court of Appeal has the jurisdiction over the same in exercise of its appellate jurisdiction under Article 164(3) of the Constitution and Section 379(1) of the Criminal Procedure Code.
11. The applicant invited this court to consider his conduct through the application of Section 216 and 329 of the Criminal Procedure Code. However, Section 216 relates to mitigation before the subordinate courts. Section 329 on the other hand deals with mitigation in the High

Court. As I have already noted, the applicant herein was offered an opportunity to mitigate before sentencing and the trial court considered the said mitigation and found non-custodial sentence not being appropriate in the circumstances of the case.

12. It is my considered view that I have said enough to demonstrate that this court does not have jurisdiction to entertain the instant application. The court therefore down its tools (See the owners of **Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] eKLR**). The application is dismissed for want of jurisdiction.

13. It is so ordered.

Delivered, dated and signed at Embu this 28th day of July, 2021.

L. NJUGUNA

JUDGE

.....**for the Applicant**

.....**for the Respondent**