



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL REVISION CASE 71 OF 2019

TEDDY KARIRE ODERO.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

By way of application dated 8.3.2019, the applicant TEDDY KARIRE ODERO has pleaded for re-sentencing. Attached to the said application is an affidavit of the applicant sworn on 8.3.2019. In the affidavit, the applicant has deponed that he was convicted and sentenced to serve 20 years' imprisonment for the offence of defilement. He has further raised various factors of mitigation including that he has been in prison for 7 years, he is remorseful, a first offender and sole bread winner of his family. His submissions in court were that under section 364 of the Criminal Procedure Code, this court has power to issue the orders prayed for.

Counsel for the state respondent, Mr. Kiragu, has opposed this application on the ground that this court has no jurisdiction to entertain this application or issue the orders sought as this matter had been decided on by the Court of Appeal.

The Respondent, having raised the issue of Jurisdiction, it is imperative that the court determined this issue even before venturing into considering the merit and substances of the application itself. A brief history of this case would shed light on the issue of jurisdiction.

The record is clear that the applicant was first tried and convicted in Makadara Criminal Case Number 3569/2007, for the offence of defilement contrary to section 8(1)(3) of the Sexual Offences Act, No. 3 of 2006. He was sentenced to serve 20 years' imprisonment on 29.2.2012. His appeal to the High Court, HCCR Appeal No. 80 of 2012 was dismissed on 19.9.2013 in a Judgment of the Hon. Justice A. Mbogholi Msagha J. as he then was. He filed a second appeal to the Court of Appeal, being Criminal Appeal No. 12 of 2014 (CA). in a judgment delivered on 8.2.2019, his second appeal was dismissed by the Court of Appeal.

The issue is therefore, whether this court can consider a matter which had been decided upon not only by the High Court, a court of concurrent jurisdiction, but the Court of Appeal, a superior court. In the Supreme Court Case of Samuel Kamau Macharia and Another Versus KCB and Another (2012)eKLR, the court held:

“A court’s jurisdiction flows from either the constitution or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by the constitution or other written law. It cannot arrogate itself jurisdiction exceeding that which is conferred upon it by the law.”

The powers of the High Court on revision is declared under Article 165(6) of the constitution that;

“The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function but not over a superior court.”

It is therefore clear that the High Court’s revisionary powers are only exercise over subordinate court. The powers do not extend over the High Court (itself) or any superior court.

It was argued by the applicant that this court possesses such powers under section 364 of the Criminal Code. with respect, those submissions are flawed. The said section relates to orders that the High Court may issue in revision of any orders or findings of a subordinate court, not of those of a court of concurrent jurisdiction or superior court.

I therefore find that this court does not have the jurisdiction to entertain the application of the applicant dated 8.3.2019 or to issue any of the orders prayed for therein. I find no merit in the application dated 8.3.2019 and dismiss the same wholly. Orders accordingly.

D. O. OGEMBO

JUDGE

29.9.2021.

Court:

Ruling read out in court (on-line) in the presence the applicant (Kamiti) and Mr. Chebii for the state.

D. O. OGEMBO

JUDGE

29.9.2021.