

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAMIRA

REVISION NO. 2 OF 2020

DAVID NGASORA NYAMONGO.....APPLICANT

VERSUS

THE STATE.....RESPONDENT

RULING

The applicant in this case was the accused person in Nyamira HCCR Case No. 69 of 2015 where he was charged with the offence of Murder contrary to Section 203 as read with Section 204 of the Penal Code.

After hearing and considering the evidence, this court convicted him and sentenced him to a term of imprisonment for thirty (30) years. On 9th April 2019 he filed a Constitutional Petition before this court (Petition No. 7 of 2019) seeking a reduction of the sentence but this court rejected the application as it has no jurisdiction to sit on appeal over its own decision. After that on 18th February 2020 he filed a similar application being Criminal Revision No. 10 of 2020 in Kisii High Court. That application is the subject of this ruling as the High Court having noticed that the case emanated from this court ordered its transfer to this court. The gist of the applicant's prayer if I may quote him is: -

“1. That I the petitioner is desirous and has confidence, trust and faith of petitioning in this court for the following: - reviewing, evaluating and determining sentence and conviction of this case through this petition request.”

In other words, the applicant was asking a court of equal jurisdiction with the one that convicted him to review the conviction and sentence. Neither that court nor indeed this court has jurisdiction to do so least of all in an application for revision. As I held in the Constitutional Petition No. 7 of 2019, the only recourse the petitioner had was to appeal to the Court of Appeal which he in fact had done going by correspondences received in our registry from that Court. The correspondence is in the form of two letters from the Deputy Registrar Court of Appeal Kisumu, to the Deputy Registrar of this Court calling for the records of Nyamira HCCRC No. 69 of 2015 among other cases. His appeal in Kisumu Court of Appeal is allocated Appeal No. 37 of 2019. Accordingly, this application for revision is dismissed as in any event is incompetent as **Section 364 (5) of the Criminal Procedure Code** states: -

“(5) When an appeal lies from a finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed.

As the applicant did the right thing to appeal, he should await the outcome of the appeal and not try to circumvent the course of justice by filing applications in different courts as that can only be interpreted as an abuse of the court process. The application for revision is dismissed. The ruling shall be typed and the Deputy Registrar shall personally serve it upon the applicant when he visits Kisii Main Prison for the mention of the cases as he does every fortnight. It is so ordered.

E. N. MAINA – J

13/03/2020