



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CRIMINAL REVISION NO. 119 OF 2020

ANTONY NYAGA NJAGI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

A. Introduction

1. Before this court is a notice of motion dated 12/08/2020 wherein the applicant substantially sought orders that this honourable court be pleased to have leniency on the applicant and give him another dawn in life.
2. The applicant's case is that he was convicted of the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code in Embu High Court Criminal Case No. 28 of 2014 and sentenced to 10 years' imprisonment. That, he is the breadwinner in his family of four (4) children and another two (2) belonging to his sister who were left under his care. As such, he prayed for leniency and that the court do order that the sentence do start from the date of arrest.
3. The application is opposed vide a replying affidavit by Leah Mati –Senior Prosecution Counsel wherein she deposed that the applicant did not set out the grounds for revision as required by the law. Further that, the application was misconceived as the issues raised ought to have been raised during mitigation before the trial court and that the trial court was within the law in convicting the applicant to serve ten (10) years imprisonment for the offence of murder.
4. The applicant canvassed the application by way of written submissions wherein he reiterated the contents of the supporting affidavit and the grounds in support of the application and cited Section 333(2) of the Criminal Procedure Code in support of the prayer that the time spent in custody be taken into account. The respondent elected to rely on the replying affidavit on record.

B. Issues for determination

5. I have considered the application herein and the contents of the replying affidavit by the respondent. I have further considered the submissions filed in relation to the same. As it was well put by the applicant, the application herein is as a result of a judgment of the trial court delivered on 16/06/2020 meted on the applicant on the said date and wherein the trial court (**Hon. F. Muchemi, J.**) sentenced the applicant (2nd accused) to ten (10) years' imprisonment.
6. The nature of the application herein is to review the decision of **Hon. F. Muchemi, J.** and which court is of concurrent jurisdiction with this court. The question as such is *whether this court has jurisdiction to review the decision of a court of concurrent jurisdiction* and if it has the prerequisite jurisdiction, *whether the application herein is merited.*

C. Analysis of the law and determination

i. Whether this court has jurisdiction to review the decision of a court of concurrent jurisdiction

7. It is trite law 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 opinion, 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 appellant having been dissatisfied with the decision of **Hon. F. Muchemi, J.**, he ought to have appealed to the Court of Appeal. This is appreciating the provisions of Article 50(2)(q) of the Constitution of Kenya 2010 which guarantees as a tenet of fair hearing the right of a person if convicted, to appeal to, or apply for review by a *higher court*. Further, this is since it is the court bestowed with jurisdiction pursuant to Article 165(3) of the Constitution and section 379(1) of the Criminal Procedure Code).

10. By reviewing the said sentence, this court would be arrogating 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 the rule of the thumb that superior courts cannot sit in review/appeal over decisions of their peers of equal and competent jurisdiction much less those courts higher than themselves. (See **Daniel Otieno Oracha v Republic [2019] eKLR**).

11. In my view, the only time this court can review its own decision or that of a court of concurrent jurisdiction is in exercise of the resentencing jurisdiction pursuant to **Francis Karioko Muruatetu & another –vs- Republic [2017] eKLR** and only where the court did not exercise discretion during sentencing.

12. As such, the application is not merited and the same is hereby dismissed.

13. Orders accordingly.

Delivered, dated and signed at Embu this 16th day of December, 2020.

L. NJUGUNA

JUDGE

.....**for the Appellant**

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