



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

JUDICIAL REVIEW

MISCELLANEOUS APPLICATION NO. 333 OF 2015

**IN THE MATTER OF: AN APPLICATION UNDER ARTICLE 165(b) AND (d) OF THE
CONSTITUTION AND MATTER OF EXERCISING SUPERVISORY JURISDICTION
OVER CRIMINAL CASES NUMBER 520 OF 2009, 580 OF 2009 AND 578 OF 2009 IN THE
CHIEF MAGISTRATE COURT AT MILIMANI LAW COURTS NAIROBI**

BETWEEN

MARTIN OLOO MALOBAAPPLICANT

VERSUS

DIRECTOR OF PUBLIC PROSECUTION.....1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

RULING

1. The Petitioner/ applicant in this matter is self represented. He filed an application by way of chamber summons undated under certificate of urgency seeking orders:
2. That the court be pleased to grant the appellant (sic) to review the sentence in the above mentioned case numbers Cr 520/2009 /578/2009 and Cr 580/2009 at Chief Magistrates Court Milimani Republic V Martin Oloo Maloba.
3. The applicant petitioner also filed a sworn affidavit and simultaneous with the chamber summons he also filed a notice of motion dated 17th September 2015 seeking for interpretation of Sections 12(4) (1) of the Criminal Procedure Code, Section 137(1) (2), 333(2) of the Criminal Procedure Code and Article 165(3) (d) (i) (ii) of the Constitution.
4. The applicant in his submissions seeks for an acquittal. He concedes that he did file for review of sentences after consolidation, which was dismissed by the Criminal High Court Division and that he does not understand why his case was not considered yet there is a similar matter wherein Honourable Ngenye J considered and granted the orders.
5. I have considered the applicant's applications on record as a whole .This court is not an appellate court when exercising Judicial Review jurisdiction. Even when exercising jurisdiction as the Constitutional

and Human Rights Court, it is not an appellate court.

6. Furthermore, for the court to exercise the powers of judicial review or as stipulated under Article 47 and 165 (7) of the Constitution to review sentence imposed by a court of competent jurisdiction, it must be shown that the petitioner/applicant has exhausted all the appeal avenues. In the instant case, the applicant has not filed any appeal to the Court of Appeal against refusal to revise his sentence and or to consolidate them. In the premise, he is barred from seeking a review of the same from this court.

7. Accordingly, I find that the applicant's application lacks merit. The same is hereby dismissed with no orders as to costs.

Orders accordingly.

Dated, signed and delivered at Nairobi this 19th day of December, 2016.

R.E. ABURILI

JUDGE

In the presence of Mr Martin Oloo Maloba

Mr Muranga h/b for Mr Kihara for the DPP

CA: Lorna