

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

CR. REVISION 8 OF 2013

(Arising from Bomet SPM Criminal Case No.716 of 2013)

JOSPHAT KIPTOO KOECH APPLICANT

VERSUS

REPUBLIC RESPONDENT

RULING ON REVISION

Josphat Kiptoo Koech, hereinafter referred to as the Applicant wrote to this court on 31.07.2013 in which he beseeched this court to exercise its revisionary power and set aside a sentence pronounced against him by a court subordinate to this court. The aforesaid letter was received on 31.7.2013. In that letter, the applicant complained that the sentence was harsh and excessive. He also complained that the plea was equivocal.

Pursuant to the provisions of **Section 363** of the **Criminal Procedure Code**, I examined the proceedings relating to the complaint. It is apparent from the proceedings presented to this court that the applicant was arraigned before the Senior Principal Magistrate's Court, Bomet, to face a charge of assault causing actual bodily harm contrary to **Section 251** of the **Penal Code** vide **Bomet S.P.M.C.CR. case no. 716 of 2013, R=vs=Josphat Kiptoo Koech**. The applicant pleaded guilty to the charge and was thereafter convicted and sentenced to serve eight(8) months imprisonment.

Before exercising this court's power of revision, I think I should examine the extent to which this court can exercise that jurisdiction. Let me state from the outset that the exercise of the supervisory power is not absolute. There are certain limits imposed upon this court before exercising that jurisdiction. The provisions of **Section 364(5)** of the **Criminal Procedure Code** is clear that when an appeal lies from a finding, sentence or order, and no appeal is brought, no proceedings by way of revision shall be entertained at the insistence of the party who could have appealed. I have already stated that the applicant herein, personally wrote to this court complaining that the plea was equivocal and that the consequent sentence was harsh and excessive. In my view, the above complaints are serious grounds of appeal. In my understanding, if an applicant has a right of appeal and has not appealed, he loses the right to personally or through counsel prompt the court to exercise its revisionary power. It would also appear that where a party has exercised his right of appeal, he loses his right to seek for an order of revision. In the matter before this court, it is obvious that the applicant has a right of appeal. He has even stated in the last paragraph of his letter as follows:-

“In the circumstances the applicant has lodged an appeal as required under Section 363(2) of the Criminal Procedure Code being appeal No. 31 of 2013 the applicant therefore prays that you be pleased to review the sentences, set aside conviction and free the applicant”

It is clear from the above excerpt that the applicant has exercised his right of appeal hence he has lost the right to seek for an order of revision before this court. The order which commends itself in these proceedings is that of dismissal.

Consequently, I find the application for revision to be improperly and incompetently before this court. The same is ordered struck out and dismissed.

Dated, signed, and delivered this 1st day of August, 2013.

J.K. SERGON

JUDGE