



**Makau v Republic (Criminal Revision E127 of 2024)
[2025] KEHC 5470 (KLR) (24 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 5470 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CRIMINAL REVISION E127 OF 2024**

EN MAINA, J

APRIL 24, 2025

BETWEEN

GOFFREY KILONZO MAKAU APPLICANT

AND

REPUBLIC RESPONDENT

JUDGMENT

1. By the undated application filed herein on 26th November 2024 the Applicant seeks orders as follows;
 - “ a. This court be pleased to invoke its powers of revision as donated by the Constitution and also laid down statutory provisions
 - b. The Honourable court take into account that the Applicant is sick and has health complications which he wants the Honourable court to consider.”
2. The Application is supported by the affidavit of the Applicant in which he contends that he was sentenced to serve thirty years imprisonment by the High Court on 9th March 2020 and that this court should consider the 15 years he has already served to be sufficient to serve the interest of justice.
3. The Application is vehemently opposed by the Respondent vide grounds of opposition dated 25th November 2024 which are that;
 - “ a. The application is not only misconceived but bad in law since the sentence sought to be reviewed was passed by this court on appeal in High Court Criminal No 9 of 2010 and this court is functus officio
 - b. Article 165 (6) of the Constitution provides that the High Court has no supervisory jurisdiction over superior court which includes the High Court.



- c. Section 362 and 364 of the Criminal Procedure Act does not include supervisory jurisdiction over the High Court.
 - d. This court cannot review the sentence under section 333(2) of the Criminal Procedure Act as Article 50 (q) of the Constitution provides for review by a higher court in this case, the Court of Appeal.
4. The Application was canvassed by way of written submissions. The Applicant submitted that this court is not functus officio it is seized of revisionary powers under Sections 362 and 364 of the Criminal Procedure Code and Article 165 of the Constitution. The Applicant this court to consider that he requires specialized treatment which is not available in prison and his continued incarceration will lead to irreversible health deterioration which is a violation of his constitutional rights to dignity and health. He relied on the cases of Telkom Kenya Limited vs John Ochanda [2014] eKLR, Republic vs James Kiarie Mutungei [2017] e KLR and the case of Republic vs Mohamed [2016] eKLR.
 5. For the Respondent relying on the case of Raila Odinga & 2 others vs IEBC (2013)e KLR and Jersey Evening Post Limited vs Al Thani (2002) eKLR, it was submitted that this court is functus officio being the court which, differently constituted, is the court that convicted and sentenced the Applicant; that Article 165 of the Constitution prevents this court from reviewing its own decisions whilst Section 362 and 364 of the Criminal Procedure Code does not include supervisory powers over superior courts.

Analysis and determination.

6. I have carefully considered the application, the grounds thereof, the response, the rival submissions and the law and my finding is that this court has no jurisdiction to grant the orders sought.
7. Firstly, the Applicant is serving a sentence of imprisonment for thirty years for the offence of Murder contrary to Section 203 as read together with Section 204 of the Penal Code an offence for which he was tried, convicted and sentenced by a Judge of the High Court on 9th March 2020. The court that tried him is a one of concurrent jurisdiction as this court. The revisionary power of this court both under Article 165 of the Constitution and Sections 362 and 364 of the Criminal Procedure Rules can only be exercised in relation to subordinate courts but not superior courts.
8. Further a convicted person's right for review lies with a higher court, in this case the Court of Appeal - see Article 50(2)(q) of the Constitution.
9. To review the Applicant's sentence, as urged would be tantamount to sitting on appeal against a sentence of a court of concurrent jurisdiction and that is not permissible under the law. The provisions of the law cited by the Applicant refer to the power of this court over subordinate courts but they do not confer upon the court jurisdiction to review the sentences of other judges even on grounds of illness.
10. In such circumstances as those of the Applicant he would have been best advised to petition for the President's Power of Mercy under Article 133 of the Constitution and the Power of Mercy Act as indeed the Advisory Committee established to advise the President in exercise of that function has power to consider the grounds raised by the Applicant – see section 22 of the Power of Mercy Act. Section 20 (5) of the Act obligates the CS and Committee to make available to correctional facilities the forms necessary for filing the petitions hence it is an option open to the Applicant.
11. in the end this application is found to be beyond the jurisdiction of this court and is dismissed.



JUDGMENT SIGNED, DATED AND DELIVERED VIRTUALLY ON THIS 24TH DAY OF APRIL, 2025.

E. N. MAINA

JUDGE

In the presence of:

Ms Nyauncho for the state

Geoffrey – Court Assistant/Interpreter

Applicant online from Nairobi West Prison

