JEA v Republic (Criminal Revision E117 of 2024)
[2025] KEHC 6006 (KLR) (8 May 2025) (Ruling)

Neutral citation: [2025] KEHC 6006 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NANYUKI

CRIMINAL REVISION E117 OF 2024

AK NDUNG'U, J

MAY 8, 2025

BETWEEN

JEA ..... APPLICANT

AND

REPUBLIC ..... RESPONDENT

RULING

1. The Applicant moved this court *vide* an undated Notice of Motion seeking the following orders;

   i. That, the Honourable Court be pleased to review his sentence as perabove referred provisions of the law and allow him to bring further mitigation in support of his application in the interest of justice.

   ii. That, the Honourable court be pleased to hear his prayers since it is within the rule of law under articles 50 (2)(q) And 165(3) (6) ofthe *Constitution*. Whereby this court has unlimited jurisdiction in both civil and criminal matters.

   iii. That, he was charged with the offence of incest contrary to Section 20 (1) of the *Sexual Offences Act* and sentenced to life sentence imprisonment on 24th day of September 2015 by Hon. E. Bett (SRM) Court at Nanyuki Law Court.

2. The application is based on the grounds as tabulated below verbatim;

   a. That, he therefore seek for the re-hearing of the sentence only, for the interest of justice as guided by the provision of the law cited above.

   b. That, he has no previous record.

   c. That, he was 44 years old during his arrest, married and God blessed them with four children who depend on him to bring them up in their life.

d. That, the he fully rehabilitated and reformed his character and record are good and recommendable.

e. That, it is only fair, just and appropriate in the interest of justice, and that this court grants the prayer sought.

f. That, whatever is deponed herein is true to the best of his knowledge information and belief.

3. The application is further supported by his annexed Affidavit where he depones:

i. That, he is a Kenyan male adult of sound mind hence competent to swear the affidavit.

ii. That, he was arrested on 3rd January 2015, charged with the offence of incest contrary to Section 20 (1) of the *Sexual Offences Act* and sentenced to life sentence imprisonment by Hon. E.Bett (SRM) Court at Nanyuki Law Court on 24th September 2015.

iii. That, he appealed to High Court at Nanyuki vide HCCRA No. 5 of 2016 at Nanyuki. Whereby his appeal was dismissed upon conviction and the sentence of life imprisonment was substituted to 30 years imprisonment by Hon. M. Mary Kasango (J) 14th June 2017.

iv. That, after the court decision, he further appealed to Court of Appeal vide Court of Appeal CR Appeal No. 130 of 2017 at Nyeri which was later dismissed on 27th day of October 2023 by Hon. Jamila Mohammed (JA), Hon. L. Kimaru (JA) AND Hon. O. Muchelule (JA).

v. That, he has exhausted all his appeals. And this court has unlimited jurisdiction in both Civil and Criminal matters as per Articles 165 ofthe *Constitution*. He is not challenging his conviction or the evidence on the record. He pray that this Hon. Court allows him to bring further mitigation in support of his application under humanitarian

4. In response to the application, the Respondent raised a preliminary objection dated 16th May, 2024 on the following grounds:-

i. That, the Application is misplaced, ill-advised and incompetent since it is unsupported in law.

ii. That, the Application is an abuse of the Court process and should accordingly be dismissed.

5. The question for determination is whether this court has jurisdiction to entertain this application.

6. Jurisdiction is the power of the court to adjudicate on any matter before it. It is not plucked in the air. It is donated to the courts by the people throughthe *Constitution* and statutes.

7. Addressing a similar application akin to the one before court in Nanyuki HCCR REV No. E006 of 2024 this court stated;

> " Even assuming that the revision applications were properly before the court, the issue raised in the preliminary objection is a weighty one and I find it necessary to briefly address it to bring clarity in the law and for the benefit of others who would be inclined to move the court in circumstances similar to these.
>
> The Applicants were convicted and sentenced at the Magistrates Court. The appeals both to the High Court and at the Court of Appeal were dismissed. They have now moved this court to review the sentence.
>
> Suffice to note that a higher court than this court dealt with the matter and dismissed the Appeals on both conviction and sentence. In the hierarchy of courts, this court cannot

review the orders of a court higher than it. Similarly, the court has no jurisdiction to sit on appeal or review orders made by a court of concurrent jurisdiction.

In the case of *Daniel Otieno Oracha v Republic* [2019] eKLR, where the Petitioner had applied for review of a sentence imposed by a court of concurrent jurisdiction and while holding that the court did not have jurisdiction to review the said Judgment the court observed that: -

"The law abhors that practice of a Judge sitting to review a Judgment or decision of another Judge of concurrent jurisdiction. Reduction of sentence could only be considered by the Court of Appeal or if this court was sitting on appeal of a Judgment of the subordinate court or if the Petitioner was seeking for resentence after exhausting appeal mechanisms and not otherwise....."

The law is clear and it is established beyond peradventure that this court cannot sit on appeal of its own Judgment or of a court of concurrent competent jurisdiction. Any aggrieved party has recourse to the Court of Appeal and in our instant application, the Applicants did exercise this right but without success.

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 prevails.

It is worth buttressing that a court of law can only exercise jurisdiction as conferred upon it by the *Constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law".

8. The sentiments above in, my view, correctly capture the spirit of the law. It is apparent to this court that many a litigant continue misapprehend the special jurisdiction arising from the *Muruatetu* decision leading to an unnecessary plethora of matters of this nature before our courts. I hasten to add that the special jurisdiction is only applicable in murder cases and in circumstances far removed from the ones attendant to this application.

9. The question of the circumstances or level of rehabilitation of a person post-conviction lies in the hands of prisons' administration in processes like remission of sentence and also in the realm of the Power of Mercy Committee.

10. I retain no powers to revisit the sentence imposed by the court of appeal, a court higher in the hierarchy than this court nor do I have powers to interfere with the sentence of a concurrent jurisdiction.

11. With the result that the preliminary objection herein succeeds. The application is dismissed.

DATED SIGNED AND DELIVERED VIRTUALLY THIS 8TH DAY OF MAY 2025.

A.K. NDUNG'U

JUDGE