



REPUBLIC OF KENYA



**Logechi & 2 others v Republic (Criminal Revision
E006 of 2023) [2025] KEHC 5683 (KLR) (7 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5683 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NANYUKI
CRIMINAL REVISION E006 OF 2023**

AK NDUNG'U, J

MAY 7, 2025

BETWEEN

JOSEPH ETABO LOGECHI 1ST APPLICANT

RAPHAEL LOSIKE EMULIA 2ND APPLICANT

AMOS JOSPHAT FIARAI 3RD APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicants herein filed a notice of motion application dated 24/03/2023 brought under Section 362 and 364 of the *Criminal Procedure Code* for orders that;
 - i. This Honourable court be pleased to hear and determine this application of review of the sentence under the stated provisions of the law or any other provisions of law it may deem fit.
 - ii. May this Honourable court be pleased to admit and give any other orders that deem just in the circumstances of this application.
2. It is the Applicant's case that they were convicted in Criminal Case 1600 of 1999 for four counts of robbery with violence and they were sentenced to suffer death which sentence was subsequently commuted to life imprisonment by the President's clemency. Their appeals to Nyeri high court vide High Court Criminal Appeals Nos. 443, 444 and 445 of 2000 were dismissed. Consequently, they filed an appeal to the Court of Appeal in Nyeri vide COA No. 57 of 2005 which was also dismissed. They averred that life imprisonment was harsh and excessive in the circumstances of the case as they were first offenders and had no previous convictions. That they are well behaved and have lived without prison indiscipline for the last 24 years they have been in custody. They urged the court to revise their sentences downward or order that the period served be part of their sentence or set them to serve a



- non-custodial sentence. They further urged the court to review the sentence or the date in which their sentence should commence so that they can benefit from the constitutional provisions of least severe sentence.
3. The Respondent's counsel opposed the application on account that this court is bereft of jurisdiction through a preliminary objection for reason that courts of concurrent jurisdiction should not review each other's decisions.
 4. The Applicants filed written submissions which I have duly considered.
 5. In the course of writing this ruling, I perused the record and noted that the Applicants herein had filed similar applications as the present one seeking for review of the sentence. The 1st Applicant had filed a Criminal Application No. 15 of 2018 on 25/04/2018, the 2nd Applicant had filed a Criminal Application No. 13 of 2019 on 25/10/2019 whereas the 3rd Applicant had filed a Criminal Application No. 36 of 2018 and filed on 08/10/2018. The applications were consolidated on 21/11/2019 and they were heard together by Waweru J (Rtd) on 26/05/2021.
 6. Vide a ruling delivered on 22/07/2021, their applications were dismissed following the guidelines by the Supreme Court in Muruatetu case 2 on 06/07/2021 that Muruatetu case was only applicable to murder cases. They have concealed these facts to this court.
 7. The Applicants have now filed a similar application seeking for review of their sentence again. The law provides for the principle of res judicata which applies to both civil and criminal cases. The essence of this principle is that a case involving the same parties and with similar facts and decided by a court of competent jurisdiction is res judicata and ought not to be entertained.
 8. Nyakundi J in *Wamwege v Republic* (Criminal Revision E180 of 2023) [2023] KEHC 24730 (KLR) stated thus;

“I have stated elsewhere in my writings whether indeed res-judicata is a preserve of civil law and no go zone in criminal jurisdiction matters. Why res-judicata in criminal cases. It is the epitome of litigation. This results from the rule which prevents the parties to a judicial determination from litigating the same question over again, even though the determination is demonstrably wrong except in proceedings by way of appeal, the parties bound by the judgement are estopped from question it. As between one another, they may neither pursue the same cause of action again, nor may they again litigate any issue which was an essential element in the decision.”
 9. It is therefore my view that there must be an end to litigation and precious judicial time must be used economically, not in hearing cases that have been determined by other competent courts.
 10. 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.
 11. The Applicants were sentenced convicted and sentenced at the Magistrates Court. Their appeals both to the High Court and at the Court of Appeal were dismissed. They have now moved this court to review the sentence.
 12. 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.

13. In the case of *Daniel Otieno Oracha -vs- 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: -

“ 14. 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.....”

14. 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.
15. 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.
16. 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.
17. With the result that the Application before court is res judicata and in any event, incompetent and is dismissed.

DATED SIGNED AND DELIVERED VIRTUALLY THIS 7TH DAY OF MAY 2025.

A.K. NDUNG’U

JUDGE

