



REPUBLIC OF KENYA



KENYA LAW
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**Ngala v ODPP (Criminal Application E012 of 2022)
[2024] KEHC 1534 (KLR) (16 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1534 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL APPLICATION E012 OF 2022
PJO OTIENO, J
FEBRUARY 16, 2024**

BETWEEN

MORGAN ONGWANO NGALA APPLICANT

AND

ODPP RESPONDENT

RULING

1. By way of an application dated 23rd February, 2022, the applicant has indicated that he was charged with the offence of murder contrary to section 203 as read with section 204 of the [Penal Code](#) in Kakamega HC Criminal Case No.37 of 2020 and sentenced to death. The sentence was commuted to life imprisonment by his excellency former president Uhuru Kenyatta and he thereafter appealed at the court of appeal in Kisumu in Criminal Appeal No. 138 of 2015 against his life imprisonment which sentence was commuted to thirty years by the court of appeal. He has been in custody for twelve years and his current application seeks to have him serve the remainder of his sentence outside of custody for the reason that he has undergone several trainings and attained skills in carpentry and joinery, paralegal, soap making and peer educator and would like to serve the society.
2. The application is resisted by Ms. Chala for the respondent who contested that the applicant having been sentenced by the court of appeal, this court became functus officio and cannot review the sentence.
3. The only issue that arises for my determination is whether this court has jurisdiction to hear and determine this application and if so, whether the subject application is merited.



4. The subject application seeks to review of the sentence meted out by the court of appeal. The supreme court in *Kenya Hotel Properties Limited v Attorney General & 5 others* (Petition 16 of 2020) [2022] KESC 62 (KLR) (Civ) (7 October 2022) (Judgment) held as follows on the same;

“Similarly, the Court of Appeal in agreeing with the High Court, noted the absurdity of asking a High Court to purportedly re-open a decision of the Court of Appeal, noting that no such jurisdiction exists by holding: “Its latest rising is the most baffling of all because the petition filed before the High Court sought strange prayers in that the court there was being asked to annul, strike out, reverse or rescind a judgment of this court, its elder sibling. In a system of law that is hierarchical in order, such as ours is, it seems to us that such a thing is quite plainly unheard of and for reasons far greater than sibling rivalry. The *Constitution* itself clearly delineates and demarcates what the High Court can and cannot do. One of things it cannot do by virtue of article 165(6) is supervise superior courts. Moreover, under article 164(3) of the *Constitution*, this court has jurisdiction to hear and determine appeals from the High Court. Its decisions are binding on the High Court and all courts equal and inferior to it. It is therefore quite unthinkable that the High Court could make the orders the appellant sought as against a decision of this court to quash or annul them, or that it could purport to direct this court to re-open and re-hear a concluded appeal. We consider this to be a matter of first principles so that the appellant’s submission that the issue pits supremacy of the courts against citizens’ enjoyment of fundamental rights is really misconceived because rights can only be adjudicated upon by properly authorized courts. Any declaration by a court that has no jurisdiction is itself a nullity and amounts to nothing. It matters not how strongly a court feels about a matter, or how impassioned it may feel or how motivated it may be to correct a perceived wrong: without jurisdiction it would be embarking on a hopeless adventure to nowhere.”

5. Based on the principles of stare decisis and the established constitutional judicial hierarchy between this court and the court of appeal, to seek to revisit the sentence imposed by the Court of appeal would be inimical to the powers of the court and take the form of undue usurpation of authority the court lacks.
6. The court determines that it lacks the jurisdiction to hear and grant the subject application and grant the orders sought. Since the application lies not, it is thus dismissed.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 16TH DAY OF FEBRUARY, 2024

PATRICK J. O. OTIENO

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JUDGE

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

In the presence of:

Applicant in person

Ms. Chala for the Respondent

Court Assistant: Polycap Mukabwa

