



**Kitilit v Republic (Criminal Revision E010 of 2024)
[2024] KEHC 2641 (KLR) (13 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2641 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL REVISION E010 OF 2024
RB NGETICH, J
MARCH 13, 2024**

BETWEEN

JULIUS KITILIT APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant was charged with the offence of Manslaughter contrary to section 202 as read with section 205 of the [Penal Code](#). The accused executed a plea-bargaining agreement wherein he was convicted and sentenced to serve 5 years imprisonment.
2. The Applicant has approached this court seeking for sentence review. The Applicant is seeking that the remaining term of his sentence of 5 years imprisonment meted on him be substituted so that he may serve a non-custodial sentence. The applicant states that after having a lengthy conversation with his parents who are also the complainants in this case, they have decided to forgive him as their son. He states that he is remorseful for what happened and he was a sole bread winner to the entire family.
3. The prosecution submitted that they oppose the application for reason that the court lacks jurisdiction to entertain the application since it is this same court that sentenced the Applicant upon plea bargaining hence this court cannot review its own orders.

Determination

4. I have considered the application by the Applicant together with the oral submissions by the state. The issue of the court’s jurisdiction has been raised by the Respondent thus this being a preliminary issue, this court ought to handle it first.



5. The law on jurisdiction was stated by the Supreme Court in *Samuel Kamau Macharia & another v Kenya Commercial Bank Ltd & 2 others*, Application No. 2 of 2011 thus:

“A court’s jurisdiction flows from either *the Constitution* or legislation or both. Thus, a court can only exercise jurisdiction as conferred by *the Constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law...”

6. It is not disputed that the Applicant had his matter heard and determined by this Court. The issue is whether this Court has jurisdiction to review its own order and sentence. The Supreme Court considered the issue of review of judgements and orders in *Fredrick Otieno Outa v Jared Odoyo Okello & 3 others* [2017] eKLR and held that:

“...we hold that as a general rule, the Supreme Court has no jurisdiction to sit on appeal over its own decisions, nor to review its decisions, other than in the manner already stated in paragraph (90) above. However, in exercise of its inherent powers, this Court may, upon application by a party, or on its own motion, review, any of its Judgments, Rulings or Orders, in exceptional circumstances, so as to meet the ends of justice. Such circumstances shall be limited to situations where:

- a. the Judgment, Ruling, or Order, is obtained, by fraud or deceit;
- b. the Judgment, Ruling, or Order, is a nullity, such as, when the Court itself was not competent;
- c. the Court was misled into giving Judgment, Ruling or Order, under a mistaken belief that the parties had consented thereto;
- d. the Judgment or Ruling, was rendered, on the basis of a repealed law, or as a result of, a deliberately concealed statutory provision.”

7. In view of the above, in order for a party to successfully move a court to review its own decision or that of a court with coordinate jurisdiction, the party is required to the conditions set out in the above cited case. The Applicant has not demonstrated any of the grounds set by the Supreme Court and there is therefore no ground that allows this Court to review its own decision.

Final Orders: -

8. Application for review of sentence is hereby dismissed.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 13TH DAY OF MARCH 2024.

.....

RACHEL NGETICH

JUDGE

In the presence of:

BULLETS

- Applicant present.
- Ms Ratemo for State.



- E. Kibet for State.

