



**Kiptoo v Republic (Criminal Revision E009 of 2023)
[2024] KEHC 2391 (KLR) (8 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2391 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ITEN
CRIMINAL REVISION E009 OF 2023
JRA WANANDA, J
MARCH 8, 2024**

BETWEEN

ALEX KIPCHIRCHIR KIPTOO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Before this Court is the undated Notice of Motion filed on 12/07/2023 whereof the Applicant seeks reduction of his prison sentence. The Application is expressed to be brought under Articles 25, 27(1), (2), 343, 50(1), (2) and 259 of the *Constitution* of Kenya.
2. The Applicant was charged in Iten Senior Principal Magistrates' Court Case No. 1129 of 2010 with the offence of defilement of a 12 years old child contrary to Section 8(1) as read with Section 8(3) of the *Sexual Offences Act*. The Court convicted and sentenced him to serve 30 years' imprisonment.
3. The Appellant then challenged the conviction and sentence in Eldoret High Court Criminal Appeal No. 51 of 2012. The High Court dismissed the Appeal in its entirety vide the Judgement delivered on 24/07/2015 by C. Kariuki J. The Appellant challenged the decision further vide Court of Appeal Criminal Appeal No. 89 of 2016. By the Judgment delivered on 20/09/2018, the Court of Appeal dismissed the appeal against conviction but on sentence, reduced the same to 20 years' imprisonment.
4. The Applicant has now returned to this Court seeking further reduction of the sentence. He pleads that the sentence is too harsh, that he is a 1st offender, repentant and rehabilitated. He has also cited Section 333(2) of the *Criminal Procedure Code* and prays that the period that he spent in custody before sentence be considered.
5. Although I gave the parties liberty to file written Submissions, neither of them filed any.



Analysis & Determination

6. Upon considering the material presented before the Court, I find the issues that arise for determination in this matter to be the following:
 - i. Whether the Court has jurisdiction to entertain the Application.
 - ii. Whether this Court should interfere with the sentence.
7. I now proceed to determine the said issues

i. Whether this Court has jurisdiction to entertain the present Application

8. The Petitioner was convicted and sentenced by the Magistrates Court. He appealed to the High Court against both conviction and sentence and thereafter to the Court of Appeal where his sentence was reduced. What he currently invites this Court to do is to interfere with the sentence of the Court of Appeal, a higher Court, an action which is untenable in law. A High Court Judge cannot sit on appeal over a decision of another Judge of equal jurisdiction, much less a decision of the Court of Appeal. As the Applicant exercised his right of appeal to the Court of Appeal on the issue of sentence and upon which the Court of Appeal pronounced itself, this Court is now functus officio.
9. In the case of *Joseph Maburu alias Ayub vs Republic* [2019] eKLR, Kiarie Waeru Kiarie J stated the following, which I associate myself with fully:

“Sentencing is a judicial exercise. Once a Judge or a judicial officer has pronounced a sentence, he/she becomes functus officio. If the sentence is illegal or inappropriate the only court which can address it is the appellate one. *Black’s Law Dictionary Tenth* (10th) Edition describes defines sentence as: The Judgement that a court formally pronounces after finding a criminal Defendant guilty; the punishment imposed on a criminal wrongdoer. Remitting a matter to the trial court which had become functus officio after sentencing flies in the face of the doctrine of functus officio. It amounts to asking the trial court to clothe itself with the jurisdiction of an appellate court. This is an illegality.”
10. The upshot of the foregoing is that this Court lacks the jurisdiction to entertain the present Application. Accordingly, I have no reason or grounds to determine the second issue.
11. In the premises, the Application is dismissed.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 8TH DAY OF MARCH 2024

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WANANDA J.R. ANURO

JUDGE

