



REPUBLIC OF KENYA



KENYA LAW
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**Lopuyet v Republic (Criminal Revision E050 of 2023)
[2024] KEHC 2361 (KLR) (5 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2361 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL REVISION E050 OF 2023
RB NGETICH, J
MARCH 5, 2024**

BETWEEN

EMUK LOPUYET APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant herein filed undated application on 14th December, 2023 seeking sentence rehearing. He was charged with offence of defilement contrary to Section 8(1) as read with Section 8(2) of the *Sexual Offences Act* vide Kabarnet Pmcc No. 20 of 2020. He was convicted and sentenced to serve 20 years imprisonment. Thereafter, he lodged an appeal at Kabarnet High Court against both the conviction and sentence. He later abandoned the appeal on conviction and pursued his appeal on sentence. The high court dismissed the applicant's appeal on sentence on the 4th October, 2023.
2. The applicant avers in his supporting affidavit that he is remorseful, a first offender, entirely reformed and rehabilitated hence begs for leniency from the court and argues that this Court has jurisdiction to hear and determine his application under the provisions of Article 165(3)(b) of *the Constitution* of Kenya, 2010. He urges this court to review the sentence from 20 years to a lesser sentence to facilitate social re-integration.
3. On the 6th of February, 2024 when the matter came before court, Ms Ratemo counsel for the state submitted that the Appellant filed Appeal No. 22 of 2022 before this court which was dismissed and since this court has dealt with the appeal, she submits that the court has no jurisdiction to handle matter and the Applicant should seek redress from the court of appeal.



Determination

4. The Applicant argues that this Court has jurisdiction to hear and determine his application for sentence review. 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...”

5. 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:

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 the Judgment or Ruling, was rendered, on the basis of a repealed law, or as a result of, a deliberately concealed statutory provision.”

6. It is not disputed that the Applicant had his appeal heard and determined by this Court. The Applicant having appealed to this Court and his appeal determined did not pursue further appeal to the Court of Appeal. The issue is whether this Court has jurisdiction to review its own order and sentence.
7. 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 meet certain conditions as established in the just cited case. The Applicant has not demonstrated any of the grounds set by the Supreme Court has been established in his case. There is therefore no ground that allows this Court to re-engineer its own judgement. The applicant has liberty to file either appeal or application before Court of Appeal.
8. In view of the above, this Court is functus officio and lacks jurisdiction to entertain the Applicant’s application. The application lacks merit and is hereby dismissed.

Final Orders: -

This application is hereby dismissed.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 5TH DAY OF MARCH 2024.

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RACHEL NGETICH



JUDGE

In the presence of:

- Applicant present.
- Ms Ratemo for State.
- E. Kibet – Court Assistant.

