



**Charu v Republic (Criminal Revision 33 of 2023)
[2024] KEHC 5065 (KLR) (13 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5065 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL REVISION 33 OF 2023**

DR KAVEDZA, J

MAY 13, 2024

BETWEEN

CHRISTOPHER RIBUTHI CHARU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged, tried and convicted for the offence of robbery with violence contrary to section 296 (2) of the *Penal Code* at Kibera Chief Magistrate’s Court Criminal Case no. 4536 of 2012. The trial court sentenced him to death. He challenged his conviction and sentence on appeal. On 4th July 2019, this court substituted the death sentence with an imprisonment term of 20 years.
2. He has now filed the present application received on 24th May 2023, seeking revision of sentencing. The grounds raised are that the sentence imposed was harsh and excessive. The sentence failed to comply with the provisions of section 333 (2) of the Criminal Procedure Code, Cap 75 Laws of Kenya. He is a first offender. He is remorseful. He urged the court to revise the sentence imposed.
3. This Court’s powers to review sentences are premised on Article 165 of *the Constitution* and section 362 of the *Criminal procedure Code* which provides the supervisory jurisdiction over subordinate courts but not over superior court. Section 364 of the *Criminal Procedure Code* outlines the powers of the High Court under article 165 of *the Constitution* and section 362 of the Criminal Procedure Code and states how the powers are to be exercised.
4. From the above provision, it is clear that the powers of the High Court on Revision are to be exercised only over subordinate courts and not over the High Court with respect to its own decisions. Furthermore, it is trite that where an accused person is aggrieved by the court’s decision, he may either appeal or seek a review of the sentence. In this regard a convicted person cannot appeal and at the same time seek a review.



5. The question that arises therefore is whether this Court has jurisdiction to entertain the present application. It is trite that a court derives its jurisdiction from *the Constitution* or statute. In Samuel Kamau Macharia & another vs Kenya Commercial Bank Ltd & 2 others, Application No 2 of 2011 the Supreme court held 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. I note that neither article 165 of *the Constitution* nor the Criminal Procedure Code grants this Court the jurisdiction to review its own decisions.

7. What the applicant is seeking in the present application is for this court to review its own decision. This court is however bereft of any such jurisdiction to review the said decision, as the court has become functus officio. The applicant’s remedy, if at all, lies elsewhere but certainly not in this court.

8. In view of the foregoing, this court does not have jurisdiction to entertain the instant application. See the *Owners of Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd* [1989] eKLR, where it was held that jurisdiction is everything. Without it, a court has no power to make one more step, and must down its tools.

9. The application not only lacks merit, but it is an abuse of the court process. The Application is therefore dismissed with an order that the Applicant shall not file any similar application without leave of court.

Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 13TH DAY OF MAY 2024

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D. KAVEDZA

JUDGE

