



**Koech v Republic (Criminal Revision E120 of 2023)
[2024] KEHC 5055 (KLR) (9 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5055 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CRIMINAL REVISION E120 OF 2023**

JK SERGON, J

MAY 9, 2024

BETWEEN

BERNARD KIPLANGAT KOECH APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged with the offence of dealing with alcoholic drinks contrary to section 27 (1) (b) as read with section 27 (4) of the *Alcoholic Drinks Control Act* No. 4 of 2010, Laws of Kenya. The applicant was convicted on his own plea of guilt and was on 27th November, 2023 sentenced to six (6) months imprisonment by Hon. F. Nyakundi in Kericho Criminal Case No. E 3231 of 2023 *Republic v Bernard Kiplangat Koech*.
2. The applicant has moved this court seeking to set aside the order on sentence to quash and set aside. The Applicant further stated that the sentence meted out was excessive since he did not wilfully deal with the alcoholic drinks but dealt with it due to joblessness.
3. I have considered section 348 of the *Criminal Procedure Code* which provides that; “No Appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court except as to the extent or legality of the sentence.” It is clear from the above quoted excerpt that the Applicant has a right of Appeal as against the sentence.
4. The Applicant opted to file this Revision instead of challenging the Order on sentence by way of an Appeal. The Law does not permit a party who is entitled to challenge the order on conviction or sentence on Appeal to personally approach the Court for revision.
5. It would appear from the provision of Sections 362 and 364 of the *Criminal Procedure Code* that the Court may act suo moto or may be prompted by another person or body other than the convict to exercise its power of revision.



- 6. Section 364(5) of the *Criminal Procedure Code* provides that; “When an appeal lies from a finding, sentence or order and no appeal is brought, no proceedings by way of revision shall be entertained at the instant of the party who could have appealed.”
- 7. In the case *Martin Mavuti Kituyi v Republic* HCCR. Revision No. 27 of 2013 the court rendered itself as follows; “... the very nature of revision as a discretionary remedy explains the policy underpinnings of Section 364(5) of the *Criminal Procedure Code*; that revision should not be a substitute for an appeal whatsoever or insisted upon by a party who has not filed an Appeal where one was provided for. Revision primarily serves to put right instances where a finding, sentence, order or proceedings of a lower court are tainted by incorrectness, impropriety, illegality or irregularity...”
- 8. Having personally approached this court through his Advocate to prompt this court to exercise its supervisory power of revision, the applicant breached the Provisions of Section 364(5) of the *Criminal Procedure Code*. I find the revision to be incompetently before this court. The same cannot be entertained by this court. I hereby issue an order striking out the revision.

DATED, SIGNED AND DELIVERED THIS 9TH DAY OF MAY, 2024

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J.K. SERGON
JUDGE

