



**Ngetich & another v Republic (Criminal Revision E119 of 2023)  
[2024] KEHC 4974 (KLR) (9 May 2024) (Revision)**

Neutral citation: [2024] KEHC 4974 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
CRIMINAL REVISION E119 OF 2023**

**JK SERGON, J**

**MAY 9, 2024**

**BETWEEN**

**CHARLES KIPKURUI NGETICH ..... 1<sup>ST</sup> APPLICANT**

**FRANCIS KIPLANGAT NGETICH ..... 2<sup>ND</sup> APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**REVISION**

1. The applicants were charged with the offence of threatening to kill contrary to section 223 (1) of the *Penal Code*. The matter proceeded for trial, the applicants were convicted of the said offence and were on 27th November, 2023 sentenced to a fine of Kshs. 250,000/= in default to serve one (1) year imprisonment by Hon. J.M. Munguti vide Kericho CM’s Criminal Case No. E1233 of 2022 Republic v Charles Kipkurui Ngetich & Francis Kiplangat Ngetich.
2. The applicants have moved this court whereof they sought to have the on sentence set aside and be substituted with a non-custodial sentence.
3. The Applicants stated that the sentence meted out was harsh and excessive in the circumstances and that they were not given the option of a fine or non custodial sentence. The 1st applicant stated that he was remorseful and a first time offender, who is elderly. He also cited medical grounds to wit the fact that he was unable to pass urine hence requires medical attention.
4. The 2nd applicant on the other hand stated that he was remorseful and a first time offender, he stated that he had a young family and is the sole breadwinner.



5. I have considered section 347 (1) (a) of the *Criminal Procedure Code* which provides that;

“ a person convicted on a trial held by a subordinate court of the first or second class may appeal to the High Court ” The Law does not allow a party who is entitled to challenge the order on conviction or sentence on appeal to personally approach the Court for revision.

6. 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. 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 to prompt this court to exercise its supervisory power of revision, the applicants have 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**

**J.K. SERGON**

.....

**JUDGE**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

