



**Gachogu v Republic (Miscellaneous Criminal Application
E0011 of 2021) [2024] KEHC 7298 (KLR) (12 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7298 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
MISCELLANEOUS CRIMINAL APPLICATION E0011 OF 2021
CW GITHUA, J
JUNE 12, 2024**

BETWEEN

FRANCIS GITHINJI GACHOGU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant herein, Francis Githinji Gachogu approached this court through an undated chamber summons filed on 7th April 2021 seeking review of his sentence of 30 years imprisonment passed by the High Court in criminal Appeal No.43 of 2015 as consolidated with Criminal Appeal No. 44 of 2015.
2. The background as can be ascertained from the record of appeal is that the applicant, jointly with another person not before this court, were charged and convicted of the offence of robbery with violence contrary to Section 296 (2) of the *Penal Code* in the Chief Magistrate's Court at Murang'a Criminal case No. 203 of 2011. They were sentenced to death.
3. Being aggrieved by their conviction and sentence, they separately proffered appeals to this court which were consolidated for hearing and determination. The appeals were determined on 13th December 2019 by Hon. Ngenye-Macharia J (as she then was) who upheld the trial court's conviction but set aside the death sentence imposed by the trial court which she substituted with a term of 30 years imprisonment. It is this sentence that the applicant urges this court to review.
4. In support of his application, the applicant put forward several mitigating factors both in his supporting affidavit and written submissions. He stated that he was a first offender and that as he had already served a substantial part of his sentence, this court should forgive him and revise his sentence by substituting it with either a more lenient sentence or a non- custodial sentence; that he was fully reformed and rehabilitated and if his application was allowed, he would not pose any danger to society. He further asserted that he had maintained a clean record while in prison and had acquired skills



through attending vocational training offered by the Kenya Prisons Service as part of his rehabilitation process.

5. In addition, the applicant implored me to find that the sentence imposed upon him by this court was harsh and excessive considering his deteriorating health and because he had young school going children who depended on him.
6. During the hearing, the applicant made brief oral submissions in which he faulted this court for having allegedly failed to factor into the impugned sentence the period he had spent in lawful custody.
7. The application was contested by the respondent. Learned Prosecution Counsel, Ms. Muriu submitted that the application lacked merit and ought to be dismissed because in pronouncing its sentence, the court had taken into account the period the applicant had spent in lawful custody; that having pronounced itself on the matter, this court lacked jurisdiction to entertain the application.
8. Having considered the application and the submissions made by both parties, I find that the application invokes this court's revisional jurisdiction over a sentence meted out by this court in the exercise of its appellate jurisdiction. However, a plain reading of Section 362 of the [Criminal Procedure Code](#) reveals that this court is only empowered to revise decisions made by the lower court in criminal proceedings. The provision reads as follows;

“The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.”

9. Moreover, the above revisional jurisdiction is part of the general supervisory jurisdiction donated to this court by the [Constitution](#) of Kenya 2010 which at Article 165 (6) makes it clear that the said jurisdiction can only be exercised over subordinate courts, public bodies and tribunals but not over superior courts which includes the High Court and Courts of Equal Status. For the avoidance of doubt, the provision stipulates as follows:

“The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.”

10. Flowing from the foregoing provisions of the law, it is as clear as day that this court can only exercise revisional or supervisory jurisdiction over subordinate courts and not over a superior court or a court of concurrent jurisdiction. As the impugned sentence was passed by a judge of the High Court in the exercise of the court's appellate jurisdiction, it is evident that this court lacks jurisdiction to entertain the applicant's application.
11. Once the court rendered its decision on the applicant's sentence, it became functus officio. As the applicant was obviously aggrieved by the said sentence, he ought to have challenged it by filing an appeal to the Court of Appeal instead of filing the instant application.
12. For all the above reasons, it is my finding that this application is incompetent and it is hereby stuck out.
It is so ordered.

DATED, SIGNED AND DELIVERED AT MURANG'A THIS 12TH DAY OF JUNE 2024.

C. W GITHUA



JUDGE

In the Presence of :

The Applicant

Ms. Susan Waiganjo Court Assistant

No Appearance by the Respondent

