



**PMK v Republic (Criminal Appeal E014 of 2021)
[2024] KEHC 7274 (KLR) (7 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 7274 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CRIMINAL APPEAL E014 OF 2021
AM MUTETI, J
JUNE 7, 2024**

BETWEEN

PMK APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal against the conviction and sentence by Hon. Ms. M. Wachira Chief Magistrate in Muranga's Chief Magistrates Court Criminal Case No. 1095 of 2011)

JUDGMENT

1. The appellant, in this matter was charged with the offence of incest contrary to Section 20 (1) of the Sexual Offence Act No. 3 of 2006. He was sentenced to a term of 10 years imprisonment following his conviction for the offence committing an indecent Act with a child contrary to Section 11 (1) of the *Sexual Offences Act*.
2. The appeal came up for hearing before me this morning of 6th June 2024. The appellant appeared in person while the prosecution was represented by Mr. Mwangi Pithon principal prosecution counsel.
3. The appellant confirmed to the court that he had filed written submissions and urged the court to rely on the same and deliver judgment.
4. He also pleaded with this court to take into account that he remains with only one year to serve. He went on to state that he was reformed and had trained in various fields including tailoring, carpentry and computer.
5. Mr Mwangi Pithon principal prosecution counsel in reply submitted that the state was strenuously opposed to the appeal. He informed this court that his primary ground was that this court had no jurisdiction to entertain the appeal. He further went on to state that his reason for raising the jurisdiction issue was that the High Court had previously dealt with the matter in HC. Criminal



- Appeal No. 85 of 2021 and that the Learned Honourable Mr. Justice K. Kimondo had dismissed the appeal.
6. Upon hearing that limb of submission, I enquired from the Appellant whether what Mr. Mwangi counsel for the state was submitting was correct. The appellant confirmed that to be true.
 7. In view of the above, I reserved the matter for Judgment on 7th June 2024.
 8. In this judgment I intend to deal first with the matter of jurisdiction.
 9. Jurisdictional challenge by its very nature must be determined in limine. The court of Appeal in the *Owners of Motor Vessel Lillian S. v Caltex Oil (K) Ltd* [1989] eKLR Nyarangi JA held that:

“Jurisdiction is everything. Without it a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for continuation of proceedings pending other Evidence. A court of Law should down tools in respect of the matter the moment it holds the opinion that it is without jurisdiction”.
 10. The High Court exercises Appellate jurisdiction by dint of Article 165 of *the Constitution* of Kenya as read together with Section 347 of the *Criminal Procedure Code*.
 11. A person convicted by the lower court can only appeal to the High Court once and once that right is exhausted the only recourse open to the unsuccessful litigant would be to appeal to the court of Appeal. To present yet another appeal to the High Court would amount to unmitigated abuse of Legal process. It is even more alarming when the appellant appears before a different Judge of the High Court and fails to disclose that fact to the judge. The appellant in this appeal was being utterly dishonest by prosecuting his appeal before me without disclosing the fact that my brother judge Kimondo had dealt with his matter before.
 12. Indeed, I must thank Mr. Pithon Mwangi Senior Principal prosecution counsel for raising the matter otherwise this court stood the risk of proceeding to consider the appeal on its own merit and render a decision. It would have been a very sad day for me as a judge and the judiciary if I were to render a decision on a matter that the court had previously dealt with.
 13. The appellant would have subjected the whole judicial process to public ridicule. I have agonised over this matter and wondered what would be the appropriate punishment that party like this should suffer. I have no answer yet but I take comfort in the fact that the objection by Mr. Mwangi prosecution counsel saved the court from potential embarrassment.
 14. I therefore find that the appeal before me is incompetent for the reason that the High Court having rendered itself in High Court Criminal Appeal No. 85 of 2021, the court is functus officio and cannot entertain the matter. The appeal must therefore be dismissed for want of jurisdiction.
 15. Before I leave the matter, I must say that the National Council on Administration of justice should work out a framework on information sharing between agencies within the justice sector to avert situations like this. The prison authorities holding these inmates should maintain an updated data of the status of each prisoner capturing every detail of appeals and Revisions filed by all prisoners.
 16. It is through that system that the courts will be able to detect those appellants who have multiple appeals, revisions and applications in different court stations in the country for they are there. The system should be linked to the judiciary CTS for ease of detection.
 17. The information should be publicly available for those who may be interested to check from time to time.



18. I shall end there and reiterate that the appeal is dismissed. The appellant should continue serving the remainder of his term in prison. The appeal confirms to me that rehabilitation of prisoners is indeed a long process. Clearly this appellant is yet to reform. I shall all not say more.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 7TH DAY OF JUNE 2024.

M. MUTETI

JUDGE

7/06/2024

In the presence of:

Appellant in person for the appellant.

Mwangi counsel for the state

