



Sekel v Republic (Petition E005 of 2023) [2024] KEHC 6360 (KLR) (4 June 2024) (Ruling)

Neutral citation: [2024] KEHC 6360 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NANYUKI
PETITION E005 OF 2023
AK NDUNG'U, J
JUNE 4, 2024**

BETWEEN

JOSEPH LESINIK SEKEL APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant moved this court by way of Notice of motion where he sought the following orders;
 - a. That this Honourable court be pleased to allow the applicant bring forth mitigation for sentence review.
 - b. That may this honourable be pleased to again to hear and determine
 - c. That the applicant has not drafted this application against the conviction but only for sentence review.
 - d. That this application be certified urgent and ought to be heard expeditiously.
 - e. That the substantive constitutional application is heard on priority basis.
 - f. That such other grounds that the court may deem fit, fair and just.
 - g. That is deponed here-in is true to the best of our knowledge, information and belief.
2. It is also supported by an affidavit sworn by the Applicant.
3. The DPP raised a Preliminary Objection on grounds;
 1. That this court lacks the jurisdiction to entertain, hear and/or determine the Application.
 2. That the Application is an abuse of the court process and should accordingly be dismissed.



4. What the Applicant seeks is that this Court exercises the power of revision over proceedings in this Court. It is trite law that this Court has no jurisdiction to revisit a matter that was determined and settled by a Court of concurrent jurisdiction.
5. In the case of *Bellevue Development Company Ltd v Francis Gikonyo & 7 others* [2018] eKLR, Kiage, JA stated considered of a judge reviewing the finding of a judge of concurrent jurisdiction and stated: I have no difficulty upholding the learned Judge holding that as a judge of the High Court he had no jurisdiction to enquire into or review the propriety of the decisions of the Judges, who were of concurrent jurisdiction as himself. In our system of courts, which is hierarchical in nature, judges of concurrent jurisdiction do not possess supervisory jurisdiction over each other. No judge of the High Court can superintend over fellow judges of that court or of the superior courts of equal status. That much is plain common sense. It has, moreover, been expressly stated in Article 165(6) of *the Constitution* in these terms;

“The High Court has supervisory jurisdiction over the subordinate courts and over any other person, body or authority exercising a judicial or quasi judicial function, but not over a superior court.” (Our emphasis)The learned Judge reasoned, correctly in my view, that an enquiry into the complaints in the appellant petition against the Judges called upon him to determine the lawfulness or good faith basis of both their decisions and their conduct, and he could not purport to arrogate to himself the power to review their decisions over which he had no authority. Such an undertaking would have been a plain nullity as had been stated by this Court in *Peter Ng’ang’a Muiruri Vs. Credit Bank Ltd & 2 Others* Civil Appeal No. 203 of 2006 which the learned Judge cited. The Court in dispelling the notion that a judge of concurrent jurisdiction could supervise fellow judges had stated as follows;

“It would be a usurpation of power to push forward such an approach, and whatever decision emanates from a court regarding itself as a constitutional court, with powers of review over decisions of concurrent or superior jurisdiction, such decision is at best a nullity. ”This position is so well established that it would be a strange aberration for a judge to embark on what is essentially an examination of the judicial conduct and pronouncements of judges of the same status as himself, a task that is left to courts and judges of higher status in the hierarchy, by way of appeals.

6. In the instant application, there are orders of the court appeal which this court has no powers to overturn or vary.
7. In the premises, the preliminary objection is successful. The application fails and is dismissed.

DATED SIGNED AND DELIVERED IN OPEN COURT THIS 4TH DAY OF JUNE 2024.

A.K. NDUNG’U

JUDGE

