



**Kijogere v Republic (Criminal Petition E011 of 2024)
[2024] KEHC 8919 (KLR) (16 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8919 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
CRIMINAL PETITION E011 OF 2024**

LW GITARI, J

JULY 16, 2024

BETWEEN

SILAS MURIUNGI KIJOGERE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant has filed this petition to challenge the sentence passed on him by this court on 26/10/2021. The brief background in this matter that the appellant was charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. However the appellant offered a plea bargaining agreement with the State and a plea agreement was registered in court and unequivocal plea of guilty was entered where by the applicant entered a plea of guilty to a charge of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code. The appellant was sentenced to serve ten years imprisonment. The appellant has filed his petition under Article 50(2) and 51(2) of the *Constitution* as well as various other Articles of the *Constitution* of Kenya. The applicant seeks review of the sentence imposed to a none custodial sentence as he has already served 1/3 of the sentence and he has changed. The State opposed the summons and submits that the sentence passed was deserved in view of the aggravating circumstances in the matter and the court properly observed during sentencing of the need to pass a deterrent sentence. It is also submitted that this court lacks jurisdiction to interfere with the sentence as it is ‘functus officio’.
2. I have considered the petition. I note that the applicant was convicted and sentenced under a plea agreement. Section 137L (1) of the *Criminal Procedure Code* provides:-

“Subject to subsection (2) the sentence passed by a court under this part shall be final and no appeal shall lie therefrom except as to the extent of legality of the sentence imposed.”



3. The Section is couched in mandatory terms. The petitioner has not stated that the sentence imposed was illegal. The High Court exercises jurisdiction to review orders from the sub-ordinate courts and not from the High Court. It is also true that an appeal lies to this court from the sub-ordinate court.
4. Furthermore, the Constitution under Article 165(6) & (7) gives the High Court Supervisory jurisdiction over sub-ordinate courts. This court lacks jurisdiction to review its own sentence as it would amount to sitting as a Judge in its own cause. I have not seen any provision allowing this court to review the sentence. The applicant has not brought this application under the ambit of Section 137 (L)(1) of the Criminal Procedure Code (supra). The applicant was ordered to serve ten years imprisonment under Section 205 of the Penal Code the punishment for the offence of Manslaughter is life imprisonment. I agree with the respondent that the sentence is neither harsh nor excessive to warrant interference. The sentence was lawful in the circumstances.
5. I find that this petition is not properly before this court. I dismiss the petition.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 16TH DAY OF JULY 2024.

L.W. GITARI

JUDGE

16/7/2024

