



**Ogweno v Republic (Criminal Petition 42 of 2023)
[2024] KEHC 8480 (KLR) (11 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8480 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL PETITION 42 OF 2023
DO OGEMBO, J
JULY 11, 2024**

BETWEEN

COLLINS OLUOCH OGWENO APPLICANT

AND

REPUBLIC RESPONDENT

(Being an Application for Sentence Review from Sentence in the High Court of Siaya in Criminal Case No. 32 of 2017 dated 4/5/2022 and delivered by Hon. Justice R. E. Aburili – J)

RULING

1. The petitioner, Collins Oluoch Ogweno has moved this court by a Notice of Motion application dated 15/8/2023. The application is brought under Article 25, 27 (i) (2), 50 (p) (q) and 165 (3) of *the Constitution* of Kenya, Section 26 (2) and 203 of the *Penal Code* and Section 26 (2) and 203 of the *Penal Code* and Section 216 and 329 of the *Criminal Procedure Code*. The application seeks sentence review. In the application, the applicant has raised mitigation factors that he committed the offence at a youthful age and that he is remorseful and sorry and he pleads for a second chance in life.
2. In response, the respondent has submitted that this court lacks jurisdiction over this matter in view of Article 50 (3) that every accused person has a right to fair trial which includes, if convicted, to appeal to, or to apply for review by a higher court as prescribed by law. The court has been urged to dismiss the application of the applicant.
3. I have considered the application of the applicant and the response by the prosecution. I have also considered the submissions made by the parties and the proceedings of the trial of the applicant before the trial court (High Court).
4. The applicant was charged, tried and convicted of the offence of murder. It was a protracted hearing in which a total of 9 witnesses gave evidence for the prosecution. And on being put to his defence, the applicant defended himself, giving a sworn evidence.



5. He was however convicted as charged for the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. This was on 4/5/2020. The court accorded the applicant the opportunity to mitigate, which he did, both through his advocate and by himself. It is the same factors of mitigation he raised that the applicant raises in this application. That he is remorseful and regrets the offence and pleaded for mercy. And lastly, that he was a bread winner of his family.
6. In the sentence proceedings of 4/5/2020, the trial judge considered the mitigation of the applicant and even made reference to the Supreme Court Case of *Francis Muruatetu -vs- R*, before sentencing the applicant to life imprisonment.
7. It is clear therefore that the issue the applicant raises in this application were already considered by the trial judge, a judge of concurrent jurisdiction. This application in effect, therefore seeks that this court revises a finding or determination of a judge of a concurrent jurisdiction.
8. As pointed out by counsel for the State, appeals and revisions are rights of an accused person or persons generally. But appeals are rights to be exercised before higher courts. For our case, these rights lie with the court of appeal.
9. Article 165 of *the Constitution* does not accord this court any jurisdiction to revise any orders or findings of a judge of a concurrent jurisdiction. Such revision powers of the High Court are limited to orders or findings emanating from subordinate courts and tribunals. Similarly, Section 362 of Criminal Procedure Code guarantees the High Court revisionary powers only over orders or findings of the subordinate courts and tribunals.
10. This application of the applicant asking this court to revise the orders of a judge of the High Court therefore lacks any merit. For want of jurisdiction, this court rejects the plea of the applicant. I accordingly dismiss the application of the applicant dated 15/8/2023. Orders accordingly.

DATED, SIGNED AND DELIVERED THIS 11TH DAY OF JULY, 2024.

D. O. OGEMBO

JUDGE

11/7/2024

Court

Read in presence of the applicant (Kisumu) and Ms. Kerubo for State.

D. O. OGEMBO

JUDGE

11/7/2024

