



**Sang v Republic (Criminal Revision E059 of 2024)
[2024] KEHC 9385 (KLR) (25 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9385 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CRIMINAL REVISION E059 OF 2024**

**JK SERGON, J
JULY 25, 2024**

BETWEEN

GILBERT SANG APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged with the offence of being in possession of alcoholic drinks without licence contrary to section 7 (1) (b) as read with section 62 of the [Alcoholic Control Act](#) No. 4 of 2010. The applicant was convicted on his own plea of guilt and on 24th April, 2024 sentenced to six (6) months imprisonment with no option of a fine by Hon. F.M Nyakundi in Kericho Criminal Case No. E120 of 2024 *Republic v Gilbert Sang*.
2. The applicant has moved this court pursuant to the provisions of Sections 362, 364 and 367 of the [Criminal Procedure Code](#) Cap 75 Laws of Kenya urging this court to review his sentence. The Applicant stated that he had suffered a fracture on the left femur, has an anaemic condition that requires specialised treatment that cannot be afforded to him by the prison authorities and that he was suffering severe alcohol withdrawal symptoms. He further stated that he is the sole breadwinner and that his family lives in hardship given the continued incarceration.
3. The prosecution opposed the application for sentence review and submitted that there is currently a public outcry on illicit brew and that in the circumstances the trial court was lenient during sentencing.
4. I have considered section 348 of the [Criminal Procedure Code](#) which provides that; “No Appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court except as to the extent or legality of the sentence.” It is clear from the above quoted excerpt that the Applicant has a right of Appeal as against the sentence. The Applicant opted to file this Revision instead of challenging the Order on sentence by way of an Appeal. The Law



does not permit a party who is entitled to challenge the order on conviction or sentence on Appeal to personally approach the Court for revision. It would appear from the provision of Sections 362 and 364 of the Criminal Procedure Code that the Court may act suo moto and may be prompted by another person or body other than the convict to exercise its power of revision. Section 364(5) of the Criminal Procedure Code provides that; “When an appeal lies from a finding, sentence or order and no appeal is brought, no proceedings by way of revision shall be entertained at the instant of the party who could have appealed.”

5. In the case *Martin Mavuti Kituyi v Republic* HCCR. Revision No. 27 of 2013 the court rendered itself as follows; “... the very nature of revision as a discretionary remedy explains the policy underpinnings of Section 364(5) of the *Criminal Procedure Code*; that revision should not be a substitute for an appeal whatsoever or insisted upon by a party who has not filed an Appeal where one was provided for. Revision primarily serves to put right instances where a finding, sentence, order or proceedings of a lower court are tainted by incorrectness, impropriety, illegality or irregularity...”
6. Having personally approached this court to prompt this court to exercise its supervisory power of revision, the applicant breached the Provisions of Section 364 (5) of the *Criminal Procedure Code*. I find the revision to be incompetently before this court. The same cannot be entertained by this court. I hereby issue an order striking out the revision.

DATED, SIGNED AND DELIVERED THIS 25TH DAY OF JULY, 2024

.....

J.K. SERGON

JUDGE

In the Presence of:-

C/Assistant – Rutoh

Prosecutor – Musyoki

Applicant – Present in Person

