



**Kirui & 3 others v Republic (Criminal Revision E010 of 2023)
[2024] KEHC 12407 (KLR) (17 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12407 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CRIMINAL REVISION E010 OF 2023
JK SERGON, J
OCTOBER 17, 2024**

BETWEEN

**GEOFFREY KIRUI 1ST APPLICANT
DAVID KIRUI 2ND APPLICANT
DENNIS KIRUI 3RD APPLICANT
EVANS MITEI 4TH APPLICANT**

AND

REPUBLIC RESPONDENT

RULING

1. The applicants were charged with the offence of malicious damage to property contrary to section 339 (1) of the Penal Code. The applicants pleaded guilty and were convicted of the said offence and on 31st January, 2023 sentenced to five (5) years imprisonment by Hon. B. R Kipyegon in Kericho Criminal Case No. 337 of 2023 *Republic v Geoffrey Kirui & 3 Others*.
2. The applicants have moved this court vide a notice of motion seeking sentence review. The application is promised in articles 50 (2) (o), (p) and (q) and 165 (3) of the Constitution. The applicants have invoked the supervisory power of this court.
3. The applicants deponed in their supporting affidavit annexed to the notice of motion that while they were incarcerated they had attended several rehabilitation programs offered in prison. The applicants deponed that they are the sole breadwinners and their families suffered greatly on account of their incarceration. The applicants are therefore urging this court to quash and set aside the order on sentence and substitute the same with a non-custodial sentence or probation orders and that they are willing to abide by the terms and conditions imposed by this court.



4. Section 347 (1) (a) of the *Criminal Procedure Code* provides that; “a person convicted on a trial held by a subordinate court of the first or second class may appeal to the High Court.” The Law does not allow a party who is entitled to challenge the order on conviction or sentence on appeal to personally approach the Court for revision or sentence review.
5. 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.”
6. 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...”
7. I have considered the application in the light of the material before court and I note that the application is basically for sentence review or revision. The law that guides the revisionary power of the High Court is provided for under sections 362 of the *Criminal Procedure Code* which states as follows: “The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.”
8. This court finds that the sentence imposed by the trial court was for a term of five (5) years and it is found to be lawful and found to be as provided for in law. Furthermore, there is no evidence tendered by the applicants in this instant application that the trial court acted upon some wrong principle of law and failed to take into account the proper provisions of the law when passing the sentence warranting this court’s intervention.
9. This court notes that the application for review was also unsupported by any certificates of courses undertaken and/or letters of recommendation from the prison authorities to demonstrate that they had now reformed and were also model prisoners.
10. There is therefore no good reason found by this court for it to invoke its revisionary powers so as to interfere with the sentence imposed; the application for sentence review lacks merit.
11. The applicants are found not to have exhausted their avenues for appeal and they therefore are at liberty to file an appeal against sentence if they still maintain that the sentence imposed is manifestly harsh and excessive.

DATED, SIGNED AND DELIVERED THIS 17TH DAY OF OCTOBER, 2024

J.K. SERGON

JUDGE

In the Presence of:-

C/Assistant – Rutoh

Prosecutor – Musyoki

Applicant – Present in Person

