



REPUBLIC OF KENYA



**Mugi v Republic (Criminal Revision E563 of 2023)
[2024] KEHC 12984 (KLR) (23 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12984 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CRIMINAL REVISION E563 OF 2023
CW GITHUA, J
OCTOBER 23, 2024**

BETWEEN

JOHN GICHIA MUGI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. By way of a Notice of Motion dated 26th February 2024, the advocates on record for the applicant, Messrs. Swaka Advocates moved this court requesting it to revise the sentence imposed on the applicant in Murang'a Chief Magistrate's court Sexual Offences Case No. 18 of 2015.
2. The applicant prays that his sentence be revised by substituting it with a non-custodial sentence or ordering that the sentence be commuted to the period served.
The applicant also seeks a direction that the sentences imposed in different counts be ordered to run concurrently.
3. The brief background to the application is that the applicant was charged and convicted on nine counts with the offence of committing an indecent act with a child contrary to Section 11(1) of the *Sexual Offences Act*.
The particulars were that on diverse dates between 1st February 2015 and 21st May 2015 at M. Primary School (Particulars withheld), the applicant committed indecent acts on nine young boys by touching their penises, buttocks and oral orifices.
4. Upon conviction, the applicant was sentenced to serve 10 years imprisonment in each count.
5. The record shows that the applicant was aggrieved by his conviction and sentence. He preferred an appeal to the High Court being HCCRA No. 60 of 2016. The appeal was heard and determined



by Kimondo J who dismissed it in its entirety on 4th June 2019. The learned judge upheld all the convictions and sentences in the nine counts that had been preferred against the applicant.

6. The applicant has now come back to this court seeking review of the sentence imposed by the trial court conveniently failing to disclose that he had earlier appealed to this court against his conviction and sentence and his appeal had been dismissed. He claims that he was distraught and was on the verge of a nervous breakdown considering that his total period of imprisonment was 90 years which in his view was tantamount to life imprisonment.

He claimed that he had suffered enough and was extremely remorseful; the he was ready to become a law abiding and productive member of the society.

7. The application was argued orally before me on 20th June 2024. The respondent through learned prosecution counsel Ms Muriu raised a preliminary objection challenging this court's jurisdiction to hear and determine the application. She argued that when determining the appellants appeal, Kimondo J pronounced himself on the legality of the sentences imposed by the trial court and the same cannot be the subject of review by another court of concurrent jurisdiction.
8. In his response, learned counsel, Mr. Swaka maintained that the court had jurisdiction to entertain the application since the applicant was only seeking an order that the sentence should run concurrently; that the court had jurisdiction to deal with such an application under Section 333 (2) of the *Criminal Procedure Code*.
9. In addition, Mr Swaka urged me to find that the objective of sentencing is to reform offenders and not to destroy them; that given the applicant's age, he would be more useful to society if he was allowed to live his life outside prison as opposed to spending it in jail.
10. Having considered the application and the rival oral submissions made on behalf of both parties, I find that an issue of this court's jurisdiction to determine the instant application arises and since jurisdiction is everything as without it the court cannot move a single step, it must be determined first.
11. It is not disputed and this is a matter of public record that after his conviction and sentence, the applicant appealed against his conviction and sentence and his appeal was dismissed. In dismissing the applicant's appeal against sentence, the learned judge concluded that the learned trial magistrate considered all relevant factors and applied the correct legal principles when sentencing the applicant.
12. The Hon. Judge pronounced himself as follows in respect of the applicant's prayer that his sentences be ordered to run concurrently;

“.....The appellant committed acts of indecency on 9 boys on different dates. Each count was thus a distinct and separate offence. The learned trial magistrate was entitled to order the sentence to run concurrently. I cannot then say he applied wrong principles or overlooked some material factors. The upshot is that the entire appeal is devoid of merit. It is hereby dismissed.”

13. From the foregoing, it is clear that the applicant having failed to succeed in his appeal is now asking this court to review sentences that have been the subject of a final decision by a judge of concurrent jurisdiction.



14. A plain reading of Section 362 of the *Criminal Procedure Code* reveals that the revisional jurisdiction of this court is exercised only on decisions, orders or sentences passed by subordinate courts and not superior Courts which includes the High Court. The provision 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." [Emphasis Mine] .
15. Moreover, this courts revisional jurisdiction which is what the applicant has invoked in this application is part of the courts general supervisory jurisdiction donated by the *Constitution* of Kenya 2010. Article 165 (6) of the *Constitution* makes it clear that the courts supervisory jurisdiction can only be exercised over subordinate courts, public bodies and tribunals but not over superior courts.
- Superior courts have been defined in Article 162 (1) of the *Constitution* as the Supreme court, the Court of Appeal, the High Court and Courts of Equal status.
16. Having chosen to appeal to this court against the sentence imposed by the trial court, once his appeal was unsuccessful, the applicant cannot have another bite of the cherry by applying to this court for a review of the same sentence. As demonstrated above, this court does not have revisional jurisdiction over its own decisions or decisions of other superior courts.
17. After pronouncing its decision on the applicant's appeal, this court became funtus officio. If dissatisfied with this court's determination in his appeal, the applicant's only remedy lay in filing an appeal to the Court of Appeal.
18. For all the foregoing reasons, I uphold Ms. Muriu's preliminary objection and find that this court lacks jurisdiction to determine this application. The application is accordingly struck out .
19. It is so ordered.

DATED, SIGNED AND DELIVERED AT MURANGA THIS 23RD OCTOBER 2024.

C.W GITHUA

JUDGE

In Presence of:

The applicant

Mr. Swaka for the applicant

Ms. Muriu for the respondent

Ms. Susan Waiganjo Court Assistant.

