



REPUBLIC OF KENYA



KENYA LAW
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**Gituma v Republic (Criminal Appeal E049 of 2023)
[2023] KEHC 18712 (KLR) (Crim) (21 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 18712 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL
CRIMINAL APPEAL E049 OF 2023**

DR KAVEDZA, J

JUNE 21, 2023

BETWEEN

JANET KARAMANA GITUMA APPLICANT

AND

REPUBLIC RESPONDENT

(HC Misc Criminal Application No 539 of 2018)

RULING

1. Before me is an application by the applicant, *vide* a letter dated May 8, 2023, wherein she seeks revision of the 10-year sentence she is currently serving. She prays for the same to be substituted with a non-custodial sentence in the spirit of prison decongestion.
2. The applicant pleads that she was initially arrested and charged with murder contrary to Section 203 as read together with section 204, and sentenced to thirty (30) years imprisonment by the trial court (NRO Ombija). Aggrieved by the conviction and sentence, she appealed to the Court of appeal in CA Criminal Appeal No 88 of 2014 wherein her conviction was affirmed, and the sentence was enhanced to death.
3. However, following the Supreme Court decision of *Francis Karioko Muruatetu & Another v Republic* (2017) eKLR, the applicant filed an application for review of her sentence in this court under HC Misc Criminal Application No 539 of 2018. The said application was allowed by Kimaru J, and the death sentence was set aside and substituted with a sentence of ten (10) years imprisonment, effective from 21/5/2019.



4. Subsequently, the applicant filed a further application before this court in HC Misc Criminal Application No 118 of 2020, seeking the same relief of sentence reconsideration. However, the application was dismissed on 29/7/2020 for lacking merit and for being an abuse of the court process.
5. At this juncture, it is important for this court to consider its jurisdiction to review a sentence confirmed by a court of equal status. The trial court herein (Hon Kimaru J) is a court of concurrent jurisdiction with this court. What the applicant is seeking, therefore, is for this court to review the decision of a court of concurrent jurisdiction. It is my view that in the circumstances herein, this court is bereft of any jurisdiction to review the said decision as doing so would be tantamount to sitting as an appellate court on the decision of Hon Kimaru J. The law abhors that practice of a Judge sitting to review a judgment or decision of another judge of concurrent jurisdiction as a case ought to be handled procedurally in the right forum.
6. As a general rule, superior courts cannot sit in review/appeal over decisions of their peers of equal and competent jurisdiction much less those courts higher than themselves.
7. In view of the foregoing, this court does not have jurisdiction to entertain the instant application. (See the *Owners of Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] eKLR). Therefore, the application is hereby dismissed.

RULING DATED AND DELIVERED VIRTUALLY THIS 21ST DAY OF JUNE 2023.

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D. KAVEDZA

JUDGE

In the presence of:

