



**Kirui v Republic (Criminal Petition E023 of 2022)
[2023] KEHC 18514 (KLR) (16 June 2023) (Judgment)**

Neutral citation: [2023] KEHC 18514 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL PETITION E023 OF 2022
JRA WANANDA, J
JUNE 16, 2023**

BETWEEN

RONALD KIPLETING KIRUI PETITIONER

AND

REPUBLIC RESPONDENT

JUDGMENT

1. This is an Application seeking re-sentencing and arises from a conviction for the charge of attempted murder. The Application has been brought by way of the Notice of Motion dated November 7, 2022. The same was however registered as a Petition. This explains why the decision is titled 'Judgment', rather than 'Ruling'.
2. The Petitioner was charged with the offence of attempted murder contrary to Section 220(b) of the Penal Code in Kapsabet Magistrates' Criminal Case No 3572 of 2016. He pleaded not guilty and the matter proceeded to full trial. Upon consideration of the testimonies of the witnesses and the evidence before the Court, the trial Court convicted him of the charge and sentenced him to 20 years' imprisonment.
3. Being aggrieved with the conviction and sentence of the trial Court, the Petitioner instituted an Appeal at the High Court, namely, Eldoret High Court Criminal Appeal No 110 of 2019. The Appeal was heard and dismissed on May 5, 2020 for lack of merit.
4. This therefore is the background upon which the Petitioner has now approached this Court seeking the following reliefs;
 - i. That the Petitioner is seeking for sentence review in accordance to Article 50(2)(p)(q) of the Constitution of Kenya 2010.
 - ii. Spent.



- iii. That the petitioner has been in prison a long time.
- iv. Spent.
5. The Application is premised on the grounds set out therein and the Petitioner's Affidavit sworn on November 7, 2022.
6. In his grounds, the Petitioner has stated that he is a first offender and thus begs for leniency, he is remorseful, repentant and reformed since he has learnt a lot from his incarceration in prison, he pleaded not guilty to the offence, the sentence meted out was too harsh considering his mitigating factors and circumstances, he is a young man and prays to be re-constituted in the society to serve as a role model and a teacher/mentor to others of similar behaviour. On the orders sought, he stated that he is seeking review of sentence under Section 362, 364(1) & 365 of the CPC, Cap 75 and also Article 27(1)(2) (4), 22(1), 23(1), 25c, 50(1)(2) and 51(1)(2) of the Constitution of Kenya, among other enabling laws. He also referred to the Sentencing Policy Guidelines, 2016 published by the Kenya Judiciary and also Article 165(3) a, b, d & 258(1) of the Constitution.
7. In his Supporting Affidavit, he basically repeated the above matters and also deponed that he filed the said Appeal, namely, Eldoret High Court Criminal Appeal No 110 of 2019 and that the same was dismissed in its entirety on May 5, 2020 by Sewe J He then attached a copy of the Judgment as an exhibit.
8. The Petitioner then filed his written Submissions on January 9, 2023. On her part, State Counsel Ms Okok for the Respondent, opted to give oral Submissions.

Petitioner's Submissions

9. The Petitioner submitted that he was 19 years old at the time of his arrest, his dreams of pursuing further studies were cut short after he was arrested, he was a first offender and had no criminal history, through incarceration he has learned a hard lesson and given a second chance he will be a law-abiding citizen, the aim of convicting an offender as laid down in the sentencing guidelines of the Kenya Judiciary is to rehabilitate the offender and that he has taken the incarceration positively, he has attended several programmes and acquired skills that would enable him live a positive life in the society.

Respondent's Submissions

10. On her part, in her oral Submissions, State Counsel appearing for the Respondent submitted that the Petitioner's said Appeal was dismissed in its entirety by Sewe J on May 5, 2020, the Petitioner has now come for Review yet Sewe J had pronounced herself on the same while dismissing the Appeal, this Court has no jurisdiction to entertain the present Application as it is a Court of similar jurisdiction, the Petitioner's recourse is only at the Court of Appeal, the Petition lacks merit and should be dismissed.

Analysis & Determination

11. The issue that arises for determination in this matter is 'Whether the Court should review the sentence imposed upon the Petitioner by the trial Court'.
12. As aforesaid, the Petitioner disclosed that he appealed to this same High Court against both conviction and sentence. He in fact exhibited a copy of the Judgment.
13. I have perused the Judgment and established that the Appeal was against both conviction and sentence. I have also established that in determining the appeal, Sewe J, inter alia, considered the propriety of the sentence and dismissed it for lack of merits. This therefore means that the sentence imposed by the



trial Court has already been reviewed by this same High Court. A question therefore arises whether this Court has jurisdiction to review sentence already reviewed by a Judge of equal jurisdiction and in the same Court as this one, namely the High Court.

14. On this point, I fully associate myself with the following holding of L Njuguna J, when dealing with a similar application in the case of [Boniface Gitonga Mwenda v Republic \[2021\] eKLR](#):

' However, as I have noted, the Petitioner herein appealed the trial court's decision to this court. The court in dismissing the appeal against the sentence held that the trial court's sentence was within the law. The first appellate court being a court of concurrent jurisdiction with this court, I am of the opinion that the judgment of the said court in that respect cannot be reviewed by this court. The jurisdiction of this court in relation to review is limited to 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. (See Section 362-364 of the Criminal Procedure Code).

Reviewing of the sentence of a court of concurrent jurisdiction in relation to failure of the said court to take into account the period spent in custody would be tantamount to sitting as an Appellate court on the judgment of Hon F Muchemi J. The law abhors that practice of a judge sitting to review a judgment or decision of another judge of concurrent jurisdiction. This court doesn't have jurisdiction in that respect and as such, the prayer to that respect ought to fail.'

15. Similarly, R Lagat-Korir J, in [Weldon Kipkirui Too v Republic \[2021\] eKLR](#) stated as follows:

' This court has no jurisdiction to review the sentence which was meted out by Muya J a court of concurrent jurisdiction. The power to review the Applicant's sentence now lies in the court of appeal as it does not fall within the revisionary jurisdiction of this court as provided for under Section 362 and 364 of the Criminal Procedure Code Cap 75. (See Ronald [Kibet Rotich V R, Bomet High Court Misc Criminal Application No E024 of 2021 \[2021\] eKLR](#)).'

16. Indeed, the jurisdiction of this Court is provided for under Article 165 of the [Constitution](#), and pursuant to that Article, this Court has 'unlimited original jurisdiction in criminal and civil matters, jurisdiction to enforce bill of rights, appellate jurisdiction, jurisdiction to interpret the [Constitution](#) and supervisory jurisdiction over subordinate courts and any other jurisdiction, original or appellate, conferred on it by legislation.
17. In Samuel Kamau Macharia & Another V Kenya Commercial Bank, the Supreme Court held that a Court of law can only exercise jurisdiction conferred on it by either the [Constitution](#) or other written law or both. The Supreme Court emphasized that a Court cannot arrogate to itself jurisdiction which is not conferred on it by the law nor can it expand its jurisdiction through judicial craft.
18. The sentence issues that were up for consideration on appeal before the High Court and which it dealt with were whether the conviction was safe and whether the sentence was commensurate to the offence. It is therefore my considered view that the High Court conclusively and finally dealt with the issue of sentence review on appeal.
19. In the premises, this Court lacks jurisdiction to entertain the present application. Accordingly, the same is struck out for want of jurisdiction.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 16TH DAY OF JUNE 2023



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WANANDA J.R. WANANDA
JUDGE

