



**Lore v Republic (Criminal Appeal E073 of 2023)  
[2023] KEHC 23573 (KLR) (16 October 2023) (Judgment)**

Neutral citation: [2023] KEHC 23573 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT LODWAR  
CRIMINAL APPEAL E073 OF 2023  
RN NYAKUNDI, J  
OCTOBER 16, 2023**

**BETWEEN**

**ALBERT ERUPE LORE ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

**Coram:** Before Hon. Justice R. Nyakundi

Mr. Yusuf for the State

1. The applicant together with another were charged and convicted in two counts, namely: being in possession of specified firearm without firearm certificate contrary to section 4A (1)(a) of the Firearms Act cap 114 laws of Kenya as the 1<sup>st</sup> count, and being in possession of ammunition without firearms certificate contrary to section 4(2) (a) as read with section 4(3) (b) of the firearms Act cap 114 laws of Kenya as the 2<sup>nd</sup> count.
2. The applicant together with another pleaded not guilty and the trial was conducted where the trial court found that the prosecution had proved its case against them beyond reasonable doubt. They were convicted and charged on count I and sentenced to serve 5 years' imprisonment. For count II the accused persons were sentenced to 10 years' imprisonment and the sentences were to run concurrently.
3. Aggrieved by the conviction and sentence, the accused lodged an appeal on both the conviction and sentence, and this court held that the learned trial magistrate correctly analyzed the evidence and arrived at the correct conclusions and as such, the appeal was dismissed by Hon. J.K. Serگون.
4. The applicant is now approaching this court vide the instant application seeking a review of the said sentence of 15 years that he is currently serving on grounds that he is a first offender and a sole bread winner of the family and that he is old and with children who depend on him for their needs.



## Analysis and Determination

5. I have considered the application and the grounds relied upon by the applicant. It is my considered opinion that the issue which I need to decide on is whether the same is merited.
6. This court heard the applicant's appeal and it was held that the same lacked merit and that the conviction was proper.
7. The law abhors that practice of a judge sitting to review a judgment or decision of another judge of concurrent jurisdiction. This is because the rule of the thumb that superior courts cannot sit in review/ appeal over decisions of their peers of equal and competent jurisdiction much less those courts higher than themselves. The only time that this court can review a sentence imposed upon by a court is where such sentence was imposed by a subordinate court (as per section 362 of the [Criminal Procedure Code](#))
8. In *Samuel Kamau Macharia & another v KCB & 2 others* App No 2/2011, the Supreme Court of Kenya made it clear that a court of law can only exercise jurisdiction as conferred by the [Constitution](#) or other written law and cannot arrogate itself jurisdiction exceeding that which is conferred upon it by law, and that a court cannot expand its jurisdiction through judicial craft. And as it is trite, a court of law ought to down its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.
9. There is a vigorous litigation by the convicts in Kenya who are determined to use available opportunity and on substantial support from the case law to continuously file petitions and applications for resentencing or review of already concluded issue on sentence. This stems from the Supreme Court decision in *Francis K. Muruatetu v Republic* 2017 eKLR. The underpinning of this case is on the mandatory sentence of death for the offence of murder as prescribed in section 204 of the [Penal Code](#). Therefore such is not the case to subject every case to a complete review of the evidence, denovo, at a later trial for one offence in the event of a prior conviction as to the other. The question which lingers is whether a convict is permitted to defy a prior conviction and sentence as previously adjudged destitute of merit to demand new trial under the guise of violations in article 19, 20, 21, 22, 23,24,25, 26, 27, 28, 29, 48, 49, & 50 of the [Constitution](#). In a given fact situation, invoking the doctrine of *res-judicata* mainly applicable in the realm of civil law would not be considered to be out of step with our jurisprudence. Whether in criminal and civil proceedings a question of fact or law distinctive put in issue and directly determined by a court of competent jurisdiction cannot afterwards be disputed between the same parties. In some criminal proceedings the state is one of the parties perhaps this is self-evident from the record by operation of the law in article 157 (6) & (7) of the [Constitution](#). It defeats legal logic that in criminal proceedings it seems normal to litigate and re-litigate over and over again on the same cause of action. It is my considered view that on a case by case basis *res judicata* applies to all matters existing at the time the judgement is rendered which the state and the defence have had an opportunity to bring before the court unless otherwise is on the exercise of the right of appeal, review, or revision as the case may be. Properly understood there are clear jurisdictional guidelines for superior courts to make entry to the proceedings at various levels within the ambit of the [Constitution](#) and enabling statute law. In instant case the powers donated under review or revisionary jurisdiction is not available for distribution to the applicant.
10. In the circumstances of this case, the applicant is clearly engaging in abuse of the court process. Consequently, the applicant cannot approach the High Court again for a review of the sentence. His only recourse is to file an appeal to the Court of Appeal.

In the upshot, the Application herein is dismissed.

Orders accordingly.



DATED AND SIGNED AT ELDORET THIS 16<sup>TH</sup> DAY OF OCTOBER, 2023

**In the presence of:**

Applicant – Present

Mr.Yusuf – Present for the DPP.

.....

**R. NYAKUNDI**

**JUDGE**

