



**Guya v Republic (Miscellaneous Criminal Application E062 of 2023)
[2024] KEHC 14153 (KLR) (15 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14153 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
MISCELLANEOUS CRIMINAL APPLICATION E062 OF 2023**

**DK KEMEL, J
NOVEMBER 15, 2024**

BETWEEN

ANDREW OTIENO GUYA APPLICANT

AND

REPUBLIC RESPONDENT

(Being an Application for review of sentence and Conviction in Siaya High Court vide Criminal Case No. E018 of 2021 delivered by Hon. Judge R.E Aburili - J dated 30th November, 2021)

RULING

1. The applicant, Andrew Otieno Guya, has moved this court by way of a Notice of Motion application dated 30/5/2023. The application does not indicate under which section of the Law it is brought. However, the application seeks the following orders :-
 - a. That the applicant wishes to appeal to the Court of Appeal at Kisumu against the sentence only.
 - b. That this court be pleased to make a declaration that the sentence handed down to the applicant was excessive.
 - c. That the sentence be revised to a more lenient sentence that can be terminable to take into consideration the rehabilitation and re-integration of the applicant back to the society.
2. This application was canvassed by way of written submissions. On the side of the applicant, the applicant relied on the cases of Ahmend Ali Dharamsi Sumar -vs-r (1964) Ea 481, Fatchali Manyi -vs- R (1966) Ea 343, And Jackson Mutunga Mutheka -VS- R (2015) EKLR and pleaded that this court should order for a retrial. He also prayed for a lenient sentence based on the decisions in Dismas Wafula Kilwake -vs- R (2018) Eklr And Joshua Gichuki Mwangi -VS- R (2022) EKLR.



The Respondent, on the other hand, emphasized on Elijah Wakianda -vs- R, Criminal Appeal No. 73/2016 and concurred that this case be referred back for retrial.

3. I have considered this application and the submissions filed by the parties. I have also perused the relevant record relating to the case of the applicant. Salient on the same are as follows: -
 - a. That the applicant, was originally charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code, a charge later reduced to one of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code. He was accordingly convicted and sentenced on the substituted lesser charge to serve 50 years imprisonment by the Hon. Justice R.E. Aburili on 30/11/2021.
 - b. That subsequent to being sentenced to serve 50 years imprisonment, the applicant filed High Court Misc. Criminal Application No. E120/2022 seeking leave to file an appeal out of time. The Honourable Judge dismissed the application of the applicant in a ruling delivered on 5/10/2022.

By the present application, the applicant basically seeks revision of the two orders of the court, i.e the order on sentence and the one on leave to appeal out of time.

4. The issue that immediately arises in this matter is whether this court has jurisdictional competence to issue the orders prayed for by the applicant. As has been observed above, the two orders sought to be reviewed were issued by a judge with concurrent jurisdiction with this court. Article 165 (3) of the Constitution of Kenya declares the revisionary powers are however, limited to orders or findings of the subordinate courts or tribunals. The power of revision of the High Court do not extend to orders or findings made by Judges of concurrent jurisdiction. Further, even at Section 362 of the Criminal Procedure Code, the High Court only exercises revision powers over orders or findings of subordinate courts or tribunals.
5. By asking this court to review the orders of the Hon. Justice R.E. Aburili, the applicant is basically asking this court to revise the orders or findings of a judge of concurrent jurisdiction. As seen above, this court lacks either the constitutional or legal authority to revise any orders issued by a judge of concurrent jurisdiction. Were this court to assume such jurisdiction, the court would be sitting on appeal over its own orders. It would be unconstitutional and illegal. This court accordingly declines the invitation of the applicant.
6. In view of the foregoing observations, it is my finding that the Applicant's application dated 30/5/2023 lacks merit. The same is dismissed in its entirety.

DATED AND DELIVERED AT SIAYA THIS 15TH DAY OF NOVEMBER, 2024

D.KEMEI

JUDGE

In the presence of:

Andrew Otieno Guya.....Applicant

M/s Kerubo.....for Respondent

OgendoCourt Assistant

