



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL DIVISION**

**CRIMINAL REVISION CASE NO. 35 OF 2019**

**LESIT, J.**

**JUSTUS MUTINDA MWANGE.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING ON REVISION APPLICATION**

1. The Applicant, **JUSTUS MUTINDA MWANGE** filed a Chamber Summons application on 18<sup>th</sup> February, 2019. It seeks three orders as follows:

**(1) Moot**

**(2) Moot**

**(3) That the application is founded and supported by connecting supporting affidavit highly sworn by the Applicant herein, Certificate of Urgency among other ground to be addressed at the hearing.**

2. The Applicant simultaneously filed a Notice of Motion dated same day seeking following orders:

**(1) Moot**

**(2) That I am remorseful for the entire act since it took place due to lack of how to confront my anger.**

**(3) That I am a responsible man who was working and earning his salary and being a bread winner of my family who are stranded due to my conviction this I pray to be given a second chance to go and cater for them as they fully depend on me.**

**(4) That I beg the honourable court to consider a non-constitutional sentence since I am first offender. I didn't know the outcomes of the law but now this has become my eye opener toward my life.**

**(5) That am totally changed and reformed person since I have undergone various reform activities from the prison.**

**(6) That the application is supported by the annexed affidavit of Justus Mutinda Muange and other reasons to be adduced at the hearing hereof.**

3. The application is supported by an affidavit sworn by the Applicant in which he avers that he was sentenced to serve 8 years by the Milimani High Court for the offence of Manslaughter on the 3<sup>rd</sup> May 2017; that he was a sole bread winner of his family including his parents; that he was seeking for a non-custodial sentence through probation.

4. The application was argued by Mr. Gatambia on behalf of the Applicant. Counsel urged that the Applicant was due for release, after serving sentence, on 20<sup>th</sup> May 2021. He urged that the Applicant was seeking early release on grounds he has under taken various courses while serving sentence, and that he was the cornerstone for his aged and sickly parents and his family.

5. Mr. Kiragu, Learned Prosecution Counsel opposed the application on behalf of the State. Counsel urged that even though this court has

powers of revision which are discretionary, it lacks jurisdiction as the decision against which the application is made was by this court. Counsel urged that this court cannot sit in revision of its own orders in sentence.

6. Mr. Kiragu urged further that the application was founded on the fact the Applicant had undertaken various courses which Mr. Gatambia enumerated. He urged that none of the certificates were provided as proof that alleged trainings were undertaken.

7. In response, Mr. Gatambia urged the court to find that the application was filed by the Applicant in person and that he attached no certificates. Counsel also urged the court to find the application both meritorious and also properly before this court.

8. Having heard the submissions of counsel, and having considered the Notice of Motion application and the annexed affidavit, it is clear to me that what the Applicant is seeking is a reconsideration of his sentence. The Application did not invoke any provisions of the law in support of this application, but as counsels urged, he was relying on the powers of revision as provided under **Sections 362 and 364** of the **Criminal Procedure Code**.

9. I note from the heading of the Notice of Motion that the application is based on Milimani High Court Criminal Case No. 8 of 2016. That file has been annexed to this Revision file. It was a trial conducted by this court by myself. The charge facing the Applicant was **murder** contrary to **Section 203** of the **Penal Code**. After trial, the court convicted the Applicant of Manslaughter contrary to **section 202** of the **Penal Code**. It proceeded to sentence him to 8 years' imprisonment. On 3<sup>rd</sup> May, 2017 to run from date of arraignment in court which was 28<sup>th</sup> January 2016.

10. I have considered the submissions by both counsels. I think that the main issue for determination is whether this court has jurisdiction to entertain the application. **Section 362** of the **Criminal Procedure Code** provides:

**“362. 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.**

**364. (1) In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may -**

**(a) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 354, 357 and 358, and may enhance the sentence;**

**(b) in the case of any other order other than an order of acquittal, alter or reverse the order.”**

11. The Law on Revision as provided under the **Criminal Procedure Code** is very clear. The High Court can exercise the power of revision against decisions of the lower court once the test for revision is met.

12. This court is being asked to exercise revision of its own order made after a full trial and judgment of this court. The Applicant had a right to appeal against both the conviction and sentence, a matter the court explained to him after passing sentence.

13. We have not been told whether the Applicant appealed to the Court of Appeal. Nevertheless, whether or not he did, this court became *functus officio* the day it made the final order of sentence. It cannot arrogate upon itself a power it does not have. The application is thus incompetent and bad in law.

14. I must express my astonishment at the unprecedented increase in applications for revision and review of sentences before this court made by persons convicted before this court. Equally abysmal is the fact that advocates of the High Court do take up such applications and argue them before us, while it is very clear to them that there is no law empowering the High Court to sit in revision of its own orders in sentence passed after trial.

15. This of course excludes cases falling within the purview of the **Supreme Court case of Muruatetu & Anor. Vs. Republic Petition No. 15 of 2016**. Apart from cases falling under the **Muruatetu**, supra, guiding judgment, the rest have no law in its support.

16. This court finds itself engaged perennially with applications of these nature, which have no legs to stand on. It will be helpful if advocates guided their clients properly and desist taking up such applications.

17. Having said that, let me conclude this matter by saying that the application is incompetent and is for striking out, which I hereby do.

18. Those are my orders.

**DATED AT NAIROBI THIS 4<sup>TH</sup> DAY OF MAY, 2021.**

**LESIT, J.**

**JUDGE**

**DELIVERED THROUGH TEAMS ON 4<sup>TH</sup> MAY, 2021.**

In the presence of:

Mr. Gatambia for the Applicant

Ms Kibathi for the State

Applicant present

**LESIT, J.**

**JUDGE**