



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MIGORI

PETITION NO. E004 OF 2021

BETWEEN

CHARLES GATI RANGE.....PETITIONER

-VERSUS-

REPUBLIC.....RESPONDENT

JUDGEMENT

The applicant was convicted and sentenced to fourteen (14) years imprisonment for the offence of Manslaughter contrary to Section 202 of the Penal Code by **Mrima J in HCCRC No. 27 of 2015 on 25/7/2017.**

The petitioner has now filed an undated Petition seeking a Sentence Review Under **Sections 354, 365 of the Criminal Procedure Code CAP 75 Laws of Kenya and Articles 23 (3) (F) and 50 (2) of the Constitution 2010.**

The grounds in support of the review are restated in his undated affidavit.

The petitioner contends:-

- i. That he was convicted and sentenced to serve 14 years for the offence of manslaughter.**
- ii. That he has never appealed against the decision of this court to the Court of Appeal..**
- iii. That this honourable court do consider the whole period he was remanded and backdate his sentence from the date of arrest as prescribed in the Constitution and Section 333(2) of CPC.**
- iv. That he has undergone rehabilitation, reformation training and achieved grade and diploma respectively.**
- v. That since joining the prison in 2015, he has maintained high standards of discipline and he has been recommended by the officer in charge to be reintegrated back to the society.**

In his written submissions, the applicant reiterated the above grounds and added that the sentence meted on him was lawful and comes to this court to intervene on humanitarian grounds.

The respondent opposed the petition through written submissions dated 24/3/2021. The respondent submitted that the petitioner's submissions are architected in mitigation; that during sentencing by the trial court, all factors including mitigation were considered. Therefore, he cannot propose to mitigate again before a court of concurrent jurisdiction; that the proper forum to litigate his grievances is before the Court of Appeal; that the petitioner's petition is an abuse of the court process and should be dismissed.

This court has carefully read and considered the petitioner's petition, supporting affidavit and the respective submissions.

The gist of the petitioner's application is review of the sentence handed to him by Mrima J. The petitioner admits that he did not appeal against the conviction and sentence as the same were lawful and he does not wish to challenge it.

The petition is brought under Sections 354 and 364 of the Criminal Procedure Code (hereinafter "CPC"). Section 354 of the CPC provides

for Powers of the High Court to hear appeals, while Section 364 of the CPC provides for Powers of the High Court to consider revisions against the findings of a subordinate court. In particular, Section 364 (5) of the CPC which provides:-

“When an appeal lies from a finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained in the insistence of the party who could have appealed.”

In **Joseph Nduvi Mbuvi vs Republic (2019) eKLR** the court held as follows:

“In my view, the revisionary jurisdiction of the High Court should only be invoked where there are glaring acts or omissions but should not be a substitute for an appeal. In other words, parties should not argue an appeal under the guise of a revision. It is for this reason that the decision whether or not to hear the parties or their advocates is discretionary save for where the orders intended to be made will prejudice the accused person.”

In **Republic v Anthony Thuo Karimi [2016] eKLR** the court held as follows:-

“The basic object behind the powers of revision is to empower the high court to exercise the powers of an appellate court to prevent failure of justice in cases where the code does not provide for appeal. The power however is to be exercised only in exceptional cases where there has been a miscarriage of justice owing to: - a defect in the procedure or a manifest error on the point of law, excess of jurisdiction, abuse of power, where decision upon which the trial court relied has since been reversed or overruled when the revision appeal is being heard.

The revisional powers though are quite wide, have been circumscribed by certain limitations. Such as (a) in such cases where an appeal lies but there is no appeal brought in, originally no proceeding by way of revision shall be entertained at the instance of the party who would have appealed.[6] (b) The revisional powers are not exercisable in relation to any interlocutory order passed in any appeal, inquiry and trial. (c) The court exercising revisional powers is not authorized to convert a finding of acquittal into one of conviction. [7] *(emphasis mine)*.

Revision powers are to be exercised where there is evidence that there was a miscarriage of justice or where the right to fair trial was not observed or an error on a point of law or defect in procedure. Those powers are exercisable by a higher court over the conduct of a subordinate court during the trial.

The petitioner has submitted that there was no miscarriage of justice during the trial, conviction or sentencing. Even if there was miscarriage of justice, this court could not be the proper forum for the petitioner to ventilate his right to fair trial.

I agree with the submissions of the Learned State Counsel, Mr. Kimanthi, that the petitioner seeks to mitigate before this court yet his mitigation was duly considered before sentencing by the trial court.

Lastly, this being a court of concurrent jurisdiction with the trial court, cannot exercise revision powers against the conviction and sentence meted. The only avenue available to the petitioner to ventilate his rights is an appeal to the Court of Appeal.

The upshot is that the petition lacks merit and it is hereby dismissed.

DATED, SIGNED AND DELIVERED AT MIGORI THIS 17TH DAY OF JUNE, 2021

R. WENDOH

JUDGE

Judgment delivered in the presence of

Charles Ghati Range Petitioner in person - present

Mr. Kimanthi for the Republic.

Nyauke Court Assistant