



**REPUBLIC OF KENYA**

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

**CRIMINAL REVISION 239 OF 2019**

**FRANCIS KISIENYA.....APPLLCANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

The applicant, **FRANCIS KISIENYA MUMBI** brought up and filed this application on 20.9.2019. The application, brought under section 333(2) of the Criminal Procedure Code seeks that this court do order that the period he spent in custody awaiting determination of his case before the trial court, be accounted for in the sentence meted out. In the affidavit in support of the application the applicant has deponed that he was convicted and sentenced to serve a term of 5 years imprisonment for the offence of manslaughter. That prior to the sentence, he had been in custody for 2 years and 6 months.

In response, counsel for the state submitted that this court cannot review the sentence of a court with concurrent jurisdiction (Hon. Justice R. Korir). That the only option is for the applicant to appeal to the Court of Appeal. That the applicant was given the chance to mitigate and that if he is aggrieved with the sentence, he can only appeal against the same.

I have considered the application before the court and the submissions made by the state/respondent in opposing the same. The objection is really on whether this court has the jurisdiction to review that sentence of a Judge of concurrent Jurisdiction. There is no doubt that the Judgment and sentence herein were passed by the Hon. Justice R. Korir of the High Court of Kenya. The proceedings clearly show that the applicant was accorded the opportunity to mitigate. And amongst the issues that the applicant raised were the period that he spent in custody while his trial progressed.

The powers of revision are vested under section 362 of the Criminal Procedure Code. It states,

***“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 to the regularity of any proceedings of any such subordinate court.”***

This court’s powers of revision therefore can only be exercised over findings, sentences or orders of subordinate courts. The same do not extend to orders or findings of courts with concurrent jurisdiction.

The considered judgment and sentence, having been handed down by a court of concurrent jurisdiction, this court does not have the jurisdiction to consider any review of the same as urged by the applicant. For lack of jurisdiction, I find that the applicant’s application filed herein on 20.9.2019 lacks merit. I dismiss the same wholly.

**D. O. OGEMBO**

**JUDGE**

**2.6.2021.**

Court:

Ruling read out in court (on-line) in the presence applicant (Nairobi West Prison), Ms. Chege for the state.

**D. O. OGEMBO**

**JUDGE**

**2.6.2021.**