



**REPUBLIC OF KENYA**

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

**CRIMINAL PETITION NO 9 OF 2019**

**LTSOISON STEPHEN MTUKAI.....PETITIONER**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**(IN THE MATTER OF THE SENTENCE PASSED ON 04/10/2017 IN NANYUKI HC CRIMINAL CASE NO 8 OF 2016)**

**R U L I N G**

1. The Petitioner herein, **LTSOISON STEPHEN MTUKAI**, was convicted of murder vide *Nanyuki HC Criminal Case No 8 of 2016* (formerly *Nyeri HC Criminal Case No 22 of 2012*). On 04/10/2017 he was sentenced to death (Kasanso, J). He appealed to the *Court of Appeal* at Nyeri vide that Court's *Criminal Appeal No 179 of 2017* against conviction and sentence). On 16/09/2020 the Court of Appeal at Nyeri marked the appeal as withdrawn and deemed dismissed. The Petitioner supplied to this court a certified extract of that order of the Court of Appeal.

2. In the meantime the Petitioner had approached this court by a petition filed on 03/07/2019 by which he sought a “*re-hearing on the sentence only*”, seeking in effect a review of the sentence of death imposed upon him on 04/10/2017.

3. When the matter came up for hearing on 03/05/2021 learned counsel for the Respondent submitted that this court has no jurisdiction to review a sentence it has passed in exercise of its original criminal jurisdiction, unless the matter has been referred back to it by a higher court.

4. The power of criminal review (called **revision**) of this court is provided for in **sections 362 and 364** of the *Criminal Procedure Code, Cap 75*, and extends only to –

***“...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.”***

(Section 362)

The details of those powers of the High Court in revision are set out in section 364.

5. I have not come across any statutory provision that gives this court any criminal revisionary jurisdiction over its own findings, sentences or orders made or passed in exercise of its original criminal jurisdiction. Those are matters for appeal to the *Court of Appeal*, unless of course that court, or the *Supreme Court of Kenya*, refers back to this court any particular matter with directions for review of sentence, etc.

6. The Petitioner's application for revision of the sentence imposed upon him by this court (Kasango, J) in Nanyuki HC Criminal Case No 8 of 2016 (formerly Nyeri HC Criminal Case No 22 of 2012) is clearly misconceived. His recourse is by way of appeal to the Court of Appeal. The petition is hereby struck out. It is so ordered.

**DATED AND SIGNED AT NANYUKI THIS 2<sup>ND</sup> DAY OF JUNE 2021**

**H P G WAWERU**

**JUDGE**

**DELIVERED AT NANYUKI THIS 3<sup>RD</sup> DAY OF JUNE 2021**