



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CRIMINAL REVISION NO. E013 OF 2021

DAVID NJUE WAMAE.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. Vide the review application dated 6.11.2020, the applicant herein moved this court seeking revision of his sentence after spending a considerable period in prison.
2. It is his case that he was convicted and sentenced to serve 20 years imprisonment for defilement, contrary to section 8(1) (4) of the Sexual Offences Act No. 3 of 2006 and which conviction and sentence were upheld by the High Court vide Embu High Court Criminal Appeal No. 201 of 2011. That he has now reformed as he has undergone counselling, alternative to violence projects and other vital courses and further that he is an aged man and has reconciled with the complainant.
3. At the hearing of the application, the applicant in his oral submissions prayed that the sentence he is serving be reduced and the time spent in custody be taken into account. He submitted further that he had spent eleven (11) years in prison and that he left his family without a person to take care of them.
4. Ms. Mati for the respondent made oral submissions in rebuttal and wherein she submitted that this court is bereft of jurisdiction as Majanja J had revised the sentence in Criminal Appeal No. 201 of 2011.
5. I have considered the application herein and the rival oral submissions by the parties. As I have noted, the respondent raised an issue of jurisdiction of this court to entertain this application. It is trite that a jurisdictional issue ought to be determined *in limine* as a court does not have a basis for a continuation of proceedings pending other evidence where it has no jurisdiction. It ought to down its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction. (See **the owners of Motor Vessel "Lillian S" –vs- Caltex Oil (Kenya) Ltd [1989] eKLR.**)
6. The issues for determination therefore are whether this court has jurisdiction over the application herein and if the first issue is in affirmative, whether the application is merited.
7. The applicant deposed that he was convicted by the trial court and subsequently appealed to this court (Embu High Court) vide Criminal Appeal No. 201 of 2011. I have perused the court record and I note that indeed there was such an appeal and the judgment thereof was delivered by Hon. D.S Majanja J on 30.10.2013. The applicant wants this court to review the sentence by the learned Judge on the basis that he is remorseful and further that he has reformed. However, the first appellate court (Hon. Majanja J) and this court are courts of concurrent jurisdiction. What the applicant is therefore seeking is for this court to review the judgment of a court of concurrent jurisdiction.
8. The jurisdiction of this court is provided for under article 165(3) of the Constitution and includes unlimited original jurisdiction in criminal and civil matters; jurisdiction to enforce bill of rights; appellate jurisdiction; interpretative jurisdiction, supervisory jurisdiction and any other jurisdiction, original or appellate, conferred on it by legislation. Under the said article, this court does not have jurisdiction to review/revise a decision of a court of concurrent jurisdiction. The revisionary jurisdiction of this court is only limited to proceedings of subordinate courts (see Section 362-365).
9. Further, the issues/factors the applicant invites this court to take into account in revising the said sentence are factors which can only be considered in resentencing under Muruatetu's decision and only during mitigation in resentencing hearing and which is not the case herein. This court does not have jurisdiction to review the sentence meted on the applicant by a court of concurrent jurisdiction or to entertain mitigation for that purpose of reviewing a sentence by court of concurrent jurisdiction.
10. It is trite that a court of law can only exercise jurisdiction as conferred by the constitution or other written law and cannot arrogate itself jurisdiction exceeding that which is conferred upon it by law, and that a court cannot expand its jurisdiction through judicial craft.

(See **Samuel Kamau Macharia & Another V. KCB & 2 Others App. No. 2/2011**).

11. In the instant case, this court is bereft of jurisdiction to entertain the application herein and for that reason, it ought to lay down its tools. As such the application is dismissed for want of jurisdiction.

12. It is so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 7TH DAY OF JULY, 2021.

L. NJUGUNA

JUDGE

.....for the Applicant

.....for the Respondent