



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BOMET

MISC. CRIMINAL APPLICATION NO. E022 OF 2021

JCN.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. By Application dated 15th February 2021, the Applicant, sought revision of the 20 year sentence he is currently serving. He has cited various articles of the Constitution and set out the following grounds:-

(i) **THAT** I was charged with offence of incest contrary to Section 20 (1) of the Sexual Offences Act No. 3 of 2006. Whereby upon first conviction was sentenced to serve 17 years' imprisonment, on the case file No. 240 of 2011 at Bomet lower court, judgment delivered on 23rd March 2012, by Hon. J. Kwena (PM), I appeal against both conviction and sentence whereby this honourable court where by upon decision I was sent back to lower court for re-trial on 4th August 2014, on my second trial decision I was sent convicted and sentenced to life imprisonment by Hon. V. Karanja (RM) on the same criminal case file No. 240 of 2011 judgment delivered dated 9th April 2015, I once again being totally dissatisfied I appeal against both conviction and sentence whereby results of Criminal Appeal No. 29 of 2015 life sentence was reduced to 20 years imprisonment by Hon. M. Muya judgment dated 26th April 2017.

(ii) **THAT** it is now my humble prayer to be granted leave to lodge application of inclusion of duration I spent in remand and duration I spent while I was serving first conviction and sentence of 17 years imprisonment and duration on re-trial out of time as per the provision of Article 50 (6) of the current Constitution 2010.

(iii) **THAT** I also request that the court invoke Section 333 of the Criminal Procedure Code and direct the prison department to comply with the court directive if so ordered.

2. The Application is supported by the Applicant's sworn affidavit in which he avers that:-

(i) **THAT** I am a Kenyan citizen male adult of sound mind, and competent to swear this affidavit.

(ii) **THAT** I was charged with offence of incest contrary to Section 20 (1) of the Sexual Offences Act No. 3 of 2006. Whereby upon first conviction was sentenced to serve 17 years' imprisonment, on the case file No. 240 of 2011 at Bomet lower court, judgment delivered on 23rd March 2012, by Hon. J. Kwena (PM), I appeal against both conviction and sentence whereby this honourable court where by upon decision I was sent back to lower for re-trial on 4th August 2014, on my second trial decision I was convicted and sentenced to life imprisonment by Hon. V. Karanja (RM) on the same criminal case No. 240 of 2011 judgment dated 9th April 2015, I once again being totally dissatisfied I appeal against both conviction and sentence whereby results of Criminal Appeal No. 29 of 2015 life sentence was reduced to 20 years imprisonment by Hon. M. Muya judgment dated 26th April 2017.

(iii) **THAT** it is now my humble prayer to be granted leave to lodge application of inclusion of duration I spent in remand and duration I spent while I was serving first conviction and sentence of 17 years imprisonment and duration on re-trial out of time as per the provision of Article 50 (6) of the current Constitution 2010.

(iv) **THAT** my application has overwhelming chances of success it heard and determined.

(v) **THAT** I stated herein above is the true to the best of my knowledge, information and belief.

3. The application was urged on 28th September 2021 through oral submissions. The Applicant submitted that he was making a prayer for reconsideration of his sentence. He stated that he was sentenced to 17 years in 2012 and that he appealed and was taken through a retrial before being convicted and sentenced. That he was in remand during his retrial. That he was convicted again and he appealed to the High Court which reduced his sentence to 20 years' imprisonment. The Applicant submitted that the period he spent serving the first sentence was not factored into his eventual sentence. He prayed that the court looks into this period. He submitted that he has a family which depended on him and that his children have now dropped out of school. He prayed for a non-custodial sentence so as to get a chance to educate his family.

4. In response, Mr. Murithi the learned Prosecution Counsel submitted that the court lacked jurisdiction to entertain the application. He submitted that the Applicant was convicted of the offence of incest in the lower court and on appeal, his sentence was reduced to 20 years' imprisonment by Muya J.

5. I have considered the application and the oral submission of the parties. I have also perused the proceedings in Criminal Appeal No. 29 of 2015 which is the Applicant's appeal file. The trial record contained in the appeal file shows that the Applicant was first convicted and sentenced by Hon. J. Kwena for 17 years and was also later convicted and sentenced to life imprisonment by Hon. V. Karanja.

6. It is not clear from this record why and when a re-trial was ordered. Suffice to state that the appeal was before the High court and Muya J confirmed the conviction and reduced the sentence to 20 years imprisonment.

7. The orders sought by the Applicant amount to a revision of sentence. The revisionary jurisdiction of this court is donated by Article 165 (6) of the Constitution and is restricted to decisions of subordinate courts, persons or authority exercising a judicial or quasi-judicial function. The manner in which the court exercises its criminal revision powers is outlined in Section 362 to 366 of the Criminal Procedure Code.

8. It is apparent from the above provisions that this court can only revise sentences from a subordinate court or Tribunal and not from the High Court (See **Bomet High Court Misc. Criminal Application No. E024 of 2021 Ronald Kibet Rotich V. Republic [2021] eKLR**).

9. It is my finding that this court lacks jurisdiction to entertain the application. The Applicant's recourse is to the court of appeal. The application is thus struck out.

10. Orders accordingly.

RULING DELIVERED DATED AND SIGNED THIS 17TH DAY OF NOVEMBER, 2021.

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R. LAGAT-KORIR

JUDGE

RULING DELIVERED IN THE PRESENCE OF THE APPLICANT, MR. MURITHI FOR THE RESPONDENT AND KIPROTICH (COURT ASSISTANT)