



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MILIMANI**

**CRIMINAL DIVISION**

**CRIMINAL REVISION NO.8 OF 2019**

**ISAAC NDEGWA KIMARU.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

The Applicant, Isaac Ndegwa Kimaru was convicted of the offence of **robbery** contrary to **Section 296(1)** of the **Penal Code**. He was sentenced to serve fourteen years imprisonment. The Applicant was aggrieved by his conviction and sentence. He filed an appeal to this court vide **Nairobi High Court Criminal Appeal No.75 of 2012**. The appeal was heard by Achode J. The same was dismissed on 8<sup>th</sup> October 2014. Aggrieved by the decision, the Applicant lodged an appeal to the Court of Appeal. The appeal is yet to be heard.

The Applicant made an application to this court seeking to have the period that he was in remand custody taken into account. He conceded that his appeal has already been determined by a court of concurrent jurisdiction but nevertheless urged the court to exercise its sentencing discretion since he was not challenging the finding made by Achode J. Mr. Lawi for the State opposed the application for review of sentence. He insisted that the application was misconceived since this court lacked jurisdiction to challenge a decision made by a court of concurrent jurisdiction. He urged the court to dismiss the application.

This court has carefully considered the rival submission made by the parties to this application. This court agrees with the prosecution that the application herein is misconceived. A court of concurrent jurisdiction heard the Applicant's appeal both on conviction and sentence. The appeal was dismissed. The Applicant filed an appeal against that decision to the Court of Appeal. The appeal is yet to be heard. He has now come before this court seeking a revision of the sentence that was imposed on him. That cannot be. This court lacks the requisite jurisdiction to review or reconsider a sentence that was meted by a court of concurrent jurisdiction. The remedy available to the Applicant is to appeal. He has filed such an appeal. He must wait his turn to be heard by the Court of Appeal.

It is clear from the above that the application lacks merit. It is hereby dismissed.

**DATED AT NAIROBI THIS 10<sup>TH</sup> DAY OF JUNE 2020**

**L. KIMARU**

**JUDGE**