



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

MISC.CRIMINAL APPLICATION NO. 26 OF 2019

JAMES IRERI WAMARI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

R U L I N G

A. Introduction

1. This is a ruling on the application for review dated 5/11/2019 seeking for orders that this court be pleased to order that the period of five (5) years spent in lawful custody be considered in computing the sentence imposed by the trial court. The petitioner thus seeks for orders that his sentence do commence from 21/03/2014 being the date of arrest. The applicant in support of the said application deposed that he was not opposed to the conviction and sentence. His only concern was taking into account the time spent in custody during the pendency of the trial.
2. During the hearing, the applicant made oral submissions wherein he reiterated his position on the application and further relied on his written submissions to support the application. Ms. Lokorio for the respondent submitted that she was not opposed to the application.

B. Issues for determination

3. I have considered the application, the oral submissions made during the hearing by the applicant as well as the written submissions and find that the main issues for determination are as follows: -

- a) Whether this court has the requisite jurisdiction to entertain this application.*
- b) If so, whether the application is merited.*

4. It is imperative that the issue of jurisdiction of this court be determined first before hearing this application. The jurisdiction of the High court is provided for under Article 165(3) of the Constitution. Under the said article, the High court has unlimited original jurisdiction in criminal and civil matters; jurisdiction to enforce bill of rights; appellate jurisdiction; interpretative jurisdiction; and any other jurisdiction, original or appellate, conferred on it by legislation. The High court further has supervisory jurisdiction over the subordinate courts on all criminal matters. The only scenario where this court can entertain an application for review of the sentence is when exercising revisionary jurisdiction under Section 362 of the Criminal Procedure Code. The Criminal Procedure Code therefore does not provide for revision by the High Court of its own orders in regard to re-hearing on sentence is the subject in this petition.

5. It is trite law that a court of law can only exercise jurisdiction as conferred by the constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. I note that the sentence which the applicant seeks to review was passed by this Honourable Court upon conviction of an offence of murder. As such the applicant is basically seeking that this court do review its own decision regarding sentence.

6. The petitioner after being convicted by this court of the offence of murder contrary to Section 203 as read with 204 of the Penal Code and sentenced to death did not file an appeal. However, he filed an application in the Court of Appeal seeking for orders to adduce additional evidence but was dismissed.

7. Article 164(3) of the Constitution bestows the Court of Appeal with jurisdiction to hear appeals from the High Court; and any other court or tribunal as prescribed by an Act of Parliament. Section 379(1) of the Criminal Procedure Code further provides that: -

“A person convicted on a trial held by the High Court and sentenced to death, or to imprisonment for a term exceeding twelve months, or to a fine exceeding two thousand shillings, may appeal to the Court of Appeal—

(a) against the conviction, on grounds of law or of fact, or of mixed law and fact;

(b) with the leave of the Court of Appeal, against the sentence, unless the sentence is one fixed by law.

8. It is my considered opinion that the right forum to seek for review of the order of this court is in the Court of Appeal.

9. It is my considered opinion that the instant application is misconceived and incompetent and that this court does not have jurisdiction to entertain it.

10. Consequently, this application is hereby struck out for want of jurisdiction.

11. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 10TH DAY OF JUNE, 2020.

F. MUCHEMI

JUDGE

In the presence of: -

Ms. Mati for the Respondent

Applicant through Video Link