



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CRIMINAL DIVISION**

**CRIMINAL REVISION NO. 243 OF 2019**

**LESIT, J**

**DANIEL LUMONYI.....1<sup>ST</sup> APPLICANT**

**ELIUD SUKURA SAMITA.....2<sup>ND</sup> APPLICANT**

**TIMOTHY WAFULA LUMONJE.....3<sup>RD</sup> APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

(Being an application for review of original sentence by Hon. R. Lagat-Korir, J

dated 29<sup>th</sup> November, 2018 in Nairobi High Court Criminal Case No. 30 of 2011)

**RULING ON REVISION**

1. The Applicants **DANIEL LUMONYI** hereinafter the 1<sup>st</sup> Applicant, **ELIUD SUKURA SAMITA**, the 2<sup>nd</sup> Applicant and **TIMOTHY WAFULA LUMONJE** the 3<sup>rd</sup> Applicant were convicted of one count of **manslaughter** contrary to **section 202** as read with **section 205** of the **Penal Code**. They were sentenced each to 10 (ten) years imprisonment.
2. They had initially been charged with **murder** contrary to **section 203** as read with **section 204** of the **Penal Code**. After trial, my sister R. Korir, J substituted the charge from **murder** to **manslaughter** under **section 179(2)** of the **Criminal Procedure Code** and convicted them accordingly.
3. The three Applicants filed a joint affidavit annexed to a certificate of urgency. In the affidavit they aver that they were charged, convicted and sentenced to serve ten years sentence each for the offence of **manslaughter**. That they are remorseful for the offence. That they were first offenders. That they request the sentence to commence from the day they were arrested.
4. Each Applicant emphasized the content of their joint affidavit and urged the court to consider the period they were in custody pending the trial and to review the sentence accordingly.
5. Mr. Momanyi, Learned Prosecution Counsel opposed the application on grounds the Applicants had been tried for **murder** contrary to **section 204** of **Penal Code** by a court with parallel jurisdiction as this court and so this court lacked jurisdiction to entertain the application. He urged that the Applicants should file their appeals in the Court of Appeal and that this application should be dismissed.
6. The Applicants did not invoke any law in their application. However, from their arguments, it is clear that they are requesting this court to review the sentence imposed by a court of parallel jurisdiction as this court in order to account for the period they spent in custody pending trial.
7. The power to review or to do revision is provided under **sub-section 362 to 367** of the **Criminal Procedure Code**. Under **Section 362** “**the High Court may call for and examine the record of any criminal proceedings before a subordinate court ...**”

8. Clearly that exercise of power can only be done by the High Court respecting cases being heard by the magistrates' court. Likewise, under **section 364** the Power of the High Court on revision is limited to proceedings before the magistrate's court.

**9. Article 165 (6) (7)** gives the High Court supervisory jurisdiction over the subordinate courts and persons, bodies of authority exercising a judicial or quasi – judicial function “*but not over a superior court*”. In exercise of that power may call for the record of any proceedings before any such subordinate court, person body or authority.

10. It is clear that the Applicants were ill informed. This court cannot exercise the power of revision against its own orders, whether sentence or otherwise. The application before this court, though not specifying the jurisdiction that was involved, is in the nature of revision or sentence review which squarely falls under **Article 165 (6) and (7)** of the **Constitution** and sub-**section 362 to 367** of the **Criminal Procedure Code**.

11. This court has clearly no jurisdiction to entertain the application. I agree with the Prosecution Counsel that it should be dismissed and the Applicants advised to file an appeal in the Court of Appeal.

12. In the result, the Applicants application before this court is dismissed for want of jurisdiction.

**DELIVERED THROUGH TEAMS THIS 6<sup>TH</sup> DAY OF JULY, 2020.**

**LESIT, J**

**JUDGE**