



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 26 OF 2019

JONATHAN NJERU MANUNGA.....PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

R U L I N G

A. Introduction

1. This is a ruling on a notice of motion dated 13/08/2019 wherein the petitioner seeks for orders for rehearing of sentence. The petition was supported by his affidavit and he deposed that he had no pending appeal for his appeal to the Court of Appeal was dismissed. He prayed to be accorded the orders as it was done in the case of **Douglas Muthaura Ntoribi Misc. App No. 4/15 at Meru High Court** and in the case of **John Nganga Gacheri & Another in HCCR No. 31/16 at Kiambu High Court** and further relied on the case of **Francis Karioko Muruatetu & Another v Republic Petition No. 15 and 16 of 2015**.

2. the petition was argued by way of written submissions. Ms. Mati for the respondent opposed the application and submitted that this court lacks jurisdiction to entertain the application and similar to an earlier petition by the applicant and his co-accused being **Petition No. 1 of 2018** which was dismissed. As such, the counsel submitted that the instant application was *res judicata*. The petitioner in rebuttal submitted the application was for revision of sentence and was not made under **Muruatetu** and further that he was convicted by another judge and not this court.

B. Analysis of the law

3. I am of the view that the main issue for determination is whether the petition is merited.

4. Before looking at the merits of the application, the issue of jurisdiction was raised to the effect that since there was similar petition filed by the petitioner and his co-accused one Patricio Njiru Kirangi which was dismissed rendering this particular one *res judicata*. A jurisdictional issue arises herein that requires to be determined as a preliminary matter. It is trite law that jurisdiction is everything and without which a Court has no power to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. A Court of law downs 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" v Caltex Oil (Kenya) Ltd [1989] eKLR**).

5. The principle of *res judicata* revolves around the fact that where a suit with similar issues and between the same parties has been decided by a court of competent jurisdiction cannot be entertained by a second time. This is a principle of general application that is applicable to criminal cases as well.

6. I have perused the court records and I note that indeed there was a petition which was heard and determined by this court on 4th July 2019 and being **High Court Petition No. 1 of 2018- Patricio Njiru Kirangi & Jonathan Njeru Manunga**. The said petition sought resentencing orders and which orders were similar to the orders sought by the applicant herein and was further between same parties. It is therefore clear that the instant application is *res judicata* and this court may not have jurisdiction to entertain it. In **Samuel Kamau Macharia & Another V. KCB & 2 Others App. No. 2/2011**, the Supreme Court of Kenya made it clear that a court cannot arrogate itself jurisdiction exceeding that which is conferred upon it by law, and that a court cannot expand its jurisdiction through judicial craft.

7. It is noted that the petitioner at the hearing of the application submitted to the effect that the instant application seeks review of the sentence and was not based on **Muruatetu's decision**. However, a perusal of the application and of the petitioner's written submissions as well as his oral submissions in court clearly shows that the instant application sought resentencing pursuant to **Muruatetu's decision**. But

even assuming that the applicant seeks review of sentence in the current petition, this court is bereft of jurisdiction to review the order of a court of equal jurisdiction under the review provisions contained under Section 362 and 364 of the Criminal Procedure Code.

8. The Court of Appeal is a superior court as compared to this court and has already confirmed the decision of Hon. Chitembwe, J. and as such there is no widow for review. The said provisions only apply to decisions orders of the subordinate courts in exercise of he supervisory jurisdiction of the High Court.

9. I further note that the petitioner in his affidavit prayed that he be resented making it crystal clear that he is before this court seeking orders that this same court declined to grant lack of merit in Petition No. 1 of 2018.

10. I reach a conclusion that this court has no jurisdiction to entertain this petition which is in my considered view misconceived and incompetent.

11. The petition is hereby struck out.

12. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 2ND DAY OF JULY 2020.

F. MUCHEMI

JUDGE

In the presence of: -

Ms. Mati for Respondent

Petitioner through Video Link