**Maina v Republic (Criminal Revision E085 of 2024)**
**[2025] KEHC 14376 (KLR) (9 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14376 (KLR)

**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NANYUKI**

**CRIMINAL REVISION E085 OF 2024**

**AK NDUNG'U, J**

**OCTOBER 9, 2025**

**BETWEEN**

**PETER NDIRITU MAINA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant, Peter Ndiritu Maina moved this court through an undated notice of motion application filed in court on 25/03/2024 brought under Section 216 and 333(2) of the Criminal Procedure Code for the main order that the Honourable court be pleased to hear and determine the sentence review application and give lenient sentence or any other order it may deem fit. Other consequential orders sought are that the court be pleased to adopt above provisions of law and precedents on matters of sentencing on minimum mandatory sentences considering circumstances of the case and mitigation.

2. The application is supported by an affidavit sworn by the Applicant herein. He deposed that he was charged with defilement contrary to Section 8(1) as read with Section 8(4) of the *Sexual Offences Act* and he was sentenced to fifteen (15) years imprisonment on 15/02/2021. That he spent a period of two years in remand during trial a time that was not computed to his sentence as provided under Section 333(2) of the Criminal Procedure Code. He lodged his appeal to this court vide Nanyuki High Court Criminal Appeal No. E006 of 2021 which was dismissed and sentence upheld by Kimei J. That he has no other pending matter before any court. He deponed that he has rehabilitated and reformed as he has participated in various training while in prison. He has been of high discipline and conduct and a good role model to other prisoners and he now seeks sentence to be reviewed downward and be granted a lenient sentence.

3. He also filed a document titled 'sentence review application' where he raised more grounds to wit; that he is a first offender and highly remorseful, he is a young energetic man building the foundation of his

family's future, he is the breadwinner to his family and aging parents who are entitled to right of care, food, medical attention and education, that he has found favour in the case of Philip Mueke Maingi & 2 others v Republic (2023) eKLR among other cases where the issue of minimum mandatory sentence was elaborated and that he seek this court to consider the time he spent in remand pursuant to Section 333(2) of the Criminal Procedure Code.

4. In response, the Respondent's counsel filed a notice of preliminary objection on the ground that the application is misplaced, ill-advised and incompetent since it is unsupported in law. That this court lacks jurisdiction to hear the application and that the application is an abuse of the court process and should be dismissed.

5. The Respondent's counsel also filed written submissions on the preliminary objection. She argued that under Article 165(6) of *the Constitution*, the high court has supervisory jurisdiction over subordinate courts and over any person exercising judicial or quasi-judicial authority but not over superior courts. Therefore, this court does not have the jurisdiction to review the Applicant's sentence due to the fact that he already appealed to the high court and his appeal was heard and determined. Reliance was placed on the case of Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others (2012) eKLR, Kenya Hotel Properties Limited v Attorney General & 5 others (Petition 16 of 2020)[2022] KESC 62 (KLR), John Kagunda Kariuki v Republic (2019) eKLR and Ngao v Republic (Petition E017 of 2023) [2024] KEHC 2008 (KLR) where in the latter case, the court while faced with a similar issue held that the court did not have jurisdiction to review its own decision and the decision of the court of appeal.

6. I have considered the Application, the preliminary objection and submissions on record. It is noted that the Applicant herein was charged in Nanyuki Sexual Offences Case No. E40 of 2019 with defilement contrary to Section 8(1) and 8(4) of the *Sexual Offences Act*. He averred that he was convicted and sentenced to 15 years imprisonment. Being aggrieved by the trial court decision, he appealed to this court vide Criminal Appeal No. E006 of 2021 which appeal was heard and dismissed.

7. The Applicant now seek that his sentence that was imposed by the trial court be reviewed and substituted with a lenient sentence. He also seeks that the period spent in remand be considered pursuant to Section 333(2) of the Criminal Procedure Code.

8. The jurisdiction of the High court is provided for under Article 165(3) of *the Constitution* and includes 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 subordinate courts donated by Article 165(6) of *the Constitution* which states that;

> (6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.

9. This jurisdiction is expounded under Sections 362 and 364 of the Criminal Procedure Code.

10. The power of criminal review (called revision) of this court is provided for in Sections 362 and 364 of the Criminal Procedure Code and extends only to –

> "...the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court."

11. The details of those powers of the High Court in revision are set out in Section 364.

12. As per Article 165(6) and the above section, the High Court can only review or exercise revisionary powers over a subordinate court.

13. There is no law which bestows this court with jurisdiction to review a decision by a court of concurrent jurisdiction and/or its own decision. No judge of the High Court can superintend over fellow judges of that court or of the superior courts. The Court of Appeal in Peter Ng'ang'a Muiruri Vs. Credit Bank Ltd & 2 Others Civil Appeal No. 203 of 2006 held that;

> " It would be a usurpation of power to push forward such an approach, and whatever decision emanates from a court regarding itself as a constitutional court, with powers of review over decisions of concurrent or superior jurisdiction, such decision is at best a nullity."

14. This court having dealt with the Applicant's appeal on the sentence cannot again review its decision though passed by a different Judge. I have not come across any statutory provision that gives this court any criminal revisionary jurisdiction over its own findings, sentences or orders made or passed in exercise of its original or appellate criminal jurisdiction or jurisdiction over the findings of a superior court.

15. The court in David Mutai v Republic [2021] eKLR held that;

> " Though the High Court has unlimited original jurisdiction in Criminal and Civil matters under Article 165(3)(a) of *the Constitution*, holding it that it encompasses revisiting issues dealt with by the same Court and a step higher by the Court of Appeal, is equivalent to according the High Court cosmic jurisdiction of which it doesn't have. Litigation just like everything else bad or good, has an end. The end point in this one was at the Court of Appeal, but probably there's a slight vent to the supreme Court. Having observed the foregoing, I do find that this Court lacks jurisdiction to re-sentence the petitioner as urged. The petition therefore lacks merit and is hereby dismissed."

16. The court in Stephen Mugendi Ndwiga v Republic [2021] eKLR observed that;

> " It is my considered view that this court cannot review a judgment of Hon. S. Chitembwe J and in doing so resentence the petitioner herein...Further this court is bereft of jurisdiction to review the said judgment as doing so would be tantamount to sitting as an Appellate court on the judgment of the Learned Judge and which act the law abhors. In the same breath, this court cannot review the said judgment and in doing so take into account the time the petitioner had spent in custody. The same ought to have been dealt by Hon. Chitembwe J as the first appellate court. Failure by the said first appellate court to consider the said period cannot be rectified by this court as the same shall be akin to reviewing the decision of a court of concurrent jurisdiction."

17. Further illumination on the issue is found in the decision in John Kagunda Kariuki v Republic [2019] eKLR, where Ngugi J (as he then was) expressed himself as follows;

> " In the present case, the Applicant's appeal has already been heard by the High Court. He cannot return to the High Court for a review of the sentence imposed. He is at liberty to make an argument for reduced sentence at the Court of Appeal.
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> At the helm of the Court system in Kenya is the Supreme Court followed by the Court of Appeal. This Court falls below the Court of Appeal. After the Applicant's appeal in this Court was dismissed, he appealed to the Court of Appeal and the same was dismissed.

That decision of the Court of Appeal is binding on this Court. In light of this, to entertain this matter in respect of which the Court of Appeal has pronounced itself, no matter how compelling the arguments placed before it, would be to violate the constitutional judicial hierarchical norm. In this regard, I am guided by the holding in the case of Kenya Hotel Properties Limited v Attorney General & 5 others [2020] eKLR, where the Court of Appeal stated:As we stated at the beginning of this judgment this appeal is disturbing. The multiplicity of endless proceedings around the same dispute does not bode well for the administration of justice...Its latest rising is the most baffling of all because the petition filed before the High Court sought strange prayers in that the Court there was being asked to annul, strike out, reverse or rescind a judgment of this Court, its elder sibling. In a system of law that is hierarchical in order, such as ours is, it seems to us that such a thing is quite plainly unheard of and for reasons far greater than sibling rivalry. *The Constitution* itself clearly delineates and demarcates what the High Court can and cannot do. One of things it cannot do by virtue of Article 165(6) is supervise superior courts.Moreover, under Article 164(3) of *the Constitution*, this Court has jurisdiction to hear and determine appeals from the High Court. Its decisions are binding on the High Court and all courts equal and inferior to it. It is therefore quite unthinkable that the High Court could make the orders the appellant sought as against a decision of this Court to quash or annul them, or that it could purport to direct this Court to re-open and re-hear a concluded appeal. We consider this to be a matter of first principles so that the appellant's submission that the issue pits supremacy of the courts against citizens' enjoyment of fundamental rights is really misconceived because rights can only be adjudicated upon by properly authorized courts. Any declaration by a court that has no jurisdiction is itself a nullity and amounts to nothing.It matters not how strongly a court feels about a matter, or how impassioned it may feel or how motivated it may be to correct a perceived wrong; without jurisdiction it would be embarking on a hopeless adventure to nowhere".

18. There has been a serious misapprehension of the law following the decision of the Supreme Court in Muruatetu 1 which indeed prompted the Supreme Court to provide clarity in Muruatetu 2 and, lately, in Republic v Mwangi; Initiative for Strategic Litigation in Africa (ISLA) & 3 others (Amicus Curiae) (Petition E018 of 2023) [2024] KESC 34 (KLR) (12 July 2024) where the court has affirmed the legality of the mandatory sentences in the Sexual offences. The court stated;

> "We must also reaffirm that, although sentencing is an exercise of judicial discretion, it is Parliament and not the Judiciary that sets the parameters of sentencing for each crime in statute. As such, striking down a sentence provided for in Statute, must be based not only on evidence and sound legal principles but on an in-depth consideration of public interest and the principles of public law that informed the making of that specific law. A judicial decision of that nature cannot be based on private opinions, sentiments, sympathy or benevolence. It ought not to be arbitrary, whimsical or capricious. However, where a sentence is set in Statute, the Legislature has already determined the course, unless it is declared unconstitutional, based on sound principles and clear guidelines, upon which the Legislature should then act. Suffice to say, where Parliament enacts legislation, the Judicial arm should adjudicate disputes based on the provisions of the law.....
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> Our findings hereinabove effectively lead us to the conclusion that the judgment of the Court of Appeal delivered on 7th October, 2022 is one for setting aside. In any case, the sentence imposed by the trial court against the Respondent and affirmed by the first appellate court was lawful and remains lawful as long as Section 8 of the *Sexual Offences Act*

remains valid. We reiterate that the Court of Appeal had no jurisdiction to interfere with that sentence".

19. From the foregoing, this court can only review the judgment of a subordinate court under the jurisdiction provided by Sections 362 and 364 of the Criminal Procedure Code and the supervisory powers over subordinate court's donated by Article 165(6) of *the constitution*. I must add for good measure that such review would not extend to review of legal sentences arrived at through proper application of existing law and procedure.

20. With the result that the application herein fails for want of jurisdiction and is dismissed.

**DATED SIGNED AND DELIVERED VIRTUALLY THIS 9TH DAY OF OCTOBER 2025.**

**A.K. NDUNG'U**

**JUDGE**