

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MURANG'A
HIGH COURT CRIMINAL MISC. NO. E032 OF 2024

SAMUEL MBURU KIBE.....
APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. This is an application for review of sentence arising from Magistrates Court at Kandara in SO35 of 2016. The Applicant was tried and convicted of the offence of incest contrary to **section 20(1) as read with section (3) of the Sexual Offences Act**. He was sentenced to life imprisonment on 16th April 2018. Subsequently, his appeal to the vide High Court Criminal Appeal No. 10 of 2016 for review of sentence was dismissed.
2. The Applicant applied to this Court vide an undated Notice of Motion Application seeking for revision of his sentence to a non- custodial one.
3. The Application for revision is supported by the grounds set out on its face and the Applicant's undated Affidavit wherein he averred *inter alia* that he is seeking for anon-custodial sentence in the interest of justice and on humanitarian grounds. It is apparent from the record that
4. I have considered the applicant's application together with the record and the available evidence. It is apparent from the record that the Applicant did exercise his right of appeal in this

court although differently constituted vide High Court Criminal Appeal No. E027 of 2018 where his application for or review of sentence was dismissed vide judgement dated 2nd May 2023.

5. In considering this application I will address myself to one issue: whether this court has jurisdiction to handle this matter while the applicant had exercised his right of appeal in the same court.
6. The High Court's power of revision is set out in Article **165 (6) and (7) of the Constitution which provides:**

“(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 over a superior court.

(7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.”

7. A perusal of the pleadings herein shows that the legality of the Sentence meted against the Applicant has already been addressed by a court of competent jurisdiction. As a general rule, the High Court can only review the Judgment of a subordinate court as provided for under **sections 362 to 364 of the Criminal Procedure Code**. This court therefore does not have the jurisdiction to review its own decision. In **John Kagunda Kariuki v Republic (2019) eKLR**, Ngugi J. (as he then was) held that:

“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”.

8. It follows therefore that this court although differently constituted, is a court of concurrent jurisdiction has already upheld the Applicant’s conviction and revised the sentence. The Applicant’s only further recourse regarding his sentence that now lies in the Court of Appeal and not in this court.

9. In the circumstances, I find that this court has no jurisdiction to entertain this matter.

10. ***The Application is hereby dismissed.***

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 12TH DAY OF MARCH, 2026.

**HON. T. W. Ouya
JUDGE**

**For Applicant.....Samuel Mburu Kibe(Present at Nyeri
Maximum Prison)**

**For Respondent.....Mwakio
COURT ASSISTANT.....Brian**

ORIGINAL