

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT LODWAR
MISCELLANEOUS CRIMINAL APPLICATION NO. E031 OF 2024

PHILIP NAKULEU

AMEJU.....APPLICANT

ANT

VERSUS

REPUBLIC.....

.....RESPONDENT

(Arising from Lodwar SPMCC No. 748 of 2018 and HC CRA No. 15 of 2022)

RULING

1. Before the court for determination is the Notice of Motion dated 5th December 2024 seeking orders for revision of the sentence imposed on the applicant following his conviction in the Senior Principal Magistrate’s Court at Lodwar in Criminal Case No. 748 of 2018. The Applicant was charged with five counts stemming from two distinct incidents which occurred on 23rd and 26th of November 2018 in Turkana County.
2. Count 1 was for being in possession of specified firearms (six AK47 rifles) without a certificate, contrary to Section 4A and (1)(a) of the Firearms Act. Count 2 was for being in possession of ammunition (including 10 rounds of 7.62mm*39 special calibre and one round of 0.38 Caliber) without a certificate, contrary to Section 4(2)(a) as read with Section 4(3)(b) of the Firearms Act.
3. Count 3 was for being in possession of AK47 rifle magazines (sixteen empty magazines and five butt stocks/parts) without a certificate, contrary to Section 4(2)(a) as read with Section 4(3)(b) of the Firearms Act. Count 4 was for unlawful possession of government stores (jungle socks and handcuffs) contrary to Section 324(3) of the Penal Code and finally count 5 was for being found in possession of the six AK47 rifles in a

manner likely to suggest intent to commit robbery with violence, contrary to Section 308(1) of the Penal Code.

4. The Applicant denied all the charges and following a full trial, the trial court found the Applicant guilty and convicted him on Counts 1, 2, 3, and 5. The Applicant was acquitted on Count 4, as the prosecution failed to establish to which uniformed force or government department the stores belonged. The trial court sentenced the Applicant to serve 30 years imprisonment on Count 1, 3 years on Count 2, 3 years on Count 3, and 5 years on Count 5 and which sentences were ordered to run concurrently.
5. Being dissatisfied with the trial court's decision, the Applicant lodged an appeal in the High Court of Kenya at Lodwar, CRA No. 15 of 2022 which appeal was decided by Hon. Justice R. Nyakundi. The grounds of appeal were twofold: first, that the charges were not proved beyond a reasonable doubt; and second, that the trial court erred by sentencing the appellant to serve 41 years in jail on all counts, arguing the sentence was manifestly excessive.
6. The court re-evaluated the evidence at trial and found that the evidence, particularly the recovery of the Applicant's NSSF card at the scene of the shootout, was consistent and corroborative, establishing possession beyond reasonable doubt for the three counts of possession of firearms without a license. Its determination resulted in a partial success of the appeal in that the appeal was dismissed on both conviction and sentence on counts 1, 2, and 3 upon being satisfied that the prosecution had proved its case squarely within the law, finding the evidence sufficient to establish possession.
7. The conviction for preparation to commit a felony in counts 4 and 5 were quashed and the corresponding 5-year sentences set aside. The Court found that there was no probative evidence to fully prove that the Applicant was preparing to commit robbery with violence at the time of arrest. The effective sentence confirmed by the High Court remained 30 years imprisonment, being the longest sentence imposed for Count 1.

8. The court has considered the grounds in the face of the Application and reiterated in the supporting affidavit to the application. The Court has also taken into account the proceedings in both the trial and appellate courts and the respective decisions. For determination, as an issue, is whether this court has jurisdiction to entertain the application. The applicant confirms that upon sentence by the trial court, he moved by way of an appeal to the High Court in CRA No. 15 of 2022 challenging both the conviction and sentence by the trial court.
9. The Appellate court in its determination partially allowed the appeal in that the appeal against count 4 on preparation to commit felony was quashed and the corresponding 5-year sentence was set aside. The appeal was however dismissed on both conviction and sentence on counts 1, 2, and 3 with the effective concurrent sentence of 30 years imprisonment by the lower court being affirmed.
10. Flowing from the foregoing history, the court posits that where a party is dissatisfied with the conviction and sentence, lodges and an appeal before the high court and such an appeal the sentence is affirmed, he cannot thereafter approach the same court for review of the sentence. Anything to the contrary would be a sure recipe for disorder in the hierarchy of courts. Such runs affront the dictate that litigation comes to an end and is tantamount to the same court sitting on appeal over its own decision.
11. In **Daniel Otieno Oracha vs Republic (2019) eKLR**, where the Petitioner had applied for review of a sentence imposed by a court of concurrent jurisdiction the court held that it did not have jurisdiction to review the said Judgment then observed: -

“The law abhors that practice of a Judge sitting to review a judgment or decision of another Judge of concurrent jurisdiction. Reduction of sentence could only be considered by the Court of Appeal or if this court was sitting on appeal of a

judgment of the subordinate court or if the Petitioner was seeking for resentence after exhausting appeal mechanisms and not otherwise...”

12. The applicant was not satisfied with the outcome of the appeal nor did tire in his efforts to disturb and overturn his otherwise determined fate. He then moved the court in Lodwar HCPET No. E001 of 2023. The petition was equally heard before Hon. Nyakundi J, and dismissed in whole save for the finding that the applicant would get the benefit of the period spent in custody pending trial.
13. The court entertains no doubt that in the circumstances disclosed herein, Applicant’s sentence of 30 years imprisonment having been affirmed by this same court twice, the court now lacks jurisdiction to sit on revision of the same. The jurisdiction of the court on revision must be limited to what the law permits; the revision of orders, decisions and sentences of the courts and tribunal subordinate to it and no more. Tritely, a court cannot sit on appeal of its own Judgment or of a court of concurrent competent jurisdiction. The Applicant’s recourse after the judgments on appeal and petition was only an appeal to the Court of Appeal.
14. In the upshot, the Application before court is misconceived and without merit and is hereby dismissed.

Dated, signed and delivered virtually this 6th day of March, 2026



Patrick J O Otiendo

Judge