

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NANYUKI**

**HCCR MISC APPLCIAITON NO E019 OF 2024**

**IN THE MATTER OF ARTICLE 3, 10, 19, 20, 22 25 (A) ( C) (d)  
27 (1) (2) (4), 27, 29, 47, 48, 50 (7) 53, 165, 166, 258 and  
259 OF CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF SECTION 162, 163, 166, 167 & 280 OF  
THE C.P.C**

**IN THE MATTER OF SECTION 11, 12, 14, & 25(2) (2) (3) OF  
THE PC**

**AND**

**IN THE MATTER OF HC. CR. CASE NO 11 OF 2016 AT  
NANYUKI**

**BETWEEN**

**SAMMY CHEMUMBO**

**KIPKOECH.....APPLICAN**

**T**

**AND**

**REPUBLIC.....RESPONDE**

**NT**

**RULING**

1. By way of a Notice of Motion, the Applicant moved this court seeking orders (reproduced verbatim) Before this court is a Notice of Motion brought to this court by the Applicant seeking the following orders
  - a) Spent
  - b) That I was charged with the offence of Murder c/Section 203 as read with section 204 of the PC and sentenced to Presidential Pressure BY HON MARY KASANAGO (J) on this 2<sup>nd</sup> August 2017.
  - c) That the Presidential pressure sentence is inhuman and harsh which I am now currently serving.
  - d) That I humbly beg this court to review imposed sentence to appropriate sentence in the interest of justice, whereby this court has unlimited jurisdiction to hear and determine this application
  - e) That this application is ground upon annexed affidavit of SAMMY CHEMUMBO KIPKOECH, other further grounds to be adduced at the hearing of this application
  - f) That I the applicant is a pauper who cannot be able to afford to pay the costs of this suit.

2. The application was supported by an affidavit sworn by SAMMY CHEMUMBO KIPKOECH, the Applicant in which he depones as hereunder:-

a) That initially he was charged with the offence of murder contrary to section 203 as read with section 204 of the PC.

b) That he was charged, tried, convicted and sentenced to presidential pressure for the offence of murder c/section 203 as read with section 204 of the PC by Hon. Mary Kasango (J) on 2.8.2017

c) That he did not appeal to the court of Appeal on a Presidential pleasure sentence

d) That he has no pending appeal within the republic of Kenya over the same or any other issue than the instant matter.

e) That he humbly begs this court to review imposed presidential pressure sentence as he does not have a mental illness therefore competent.

f) He does not have any accused person and therefore he was alone in this case

g) That he had therefore cumulatively served a sentence of 8 years in custody since the arrest of 23<sup>rd</sup> February 2016 to date and a pauper who cannot be able to afford to pay the costs of this suit

3. In response the State Law raised a Preliminary Objection on the grounds that:

a) The court lacked the jurisdiction to entertain, hear and/or determine the Application.

b) The Application was an abuse of the court process and should accordingly be dismissed.

4. The preliminary objection was canvassed by way of written submissions.

5. The preliminary objection raised by the prosecution is founded on the principle that a Judge of the High Court cannot sit on appeal or review over the decision of another Judge of concurrent jurisdiction. The Applicant herein was charged, tried, convicted and sentenced by the High Court for the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The sentence complained of was imposed by Hon. Mary Kasango J. on 2nd August 2017. The present application has been placed

before this court, which is a court of equal and concurrent jurisdiction with the court that rendered the impugned decision.

6. It is now settled law that the High Court lacks jurisdiction to review, vary, set aside or overturn the decision of another High Court Judge exercising lawful jurisdiction, save where such power is expressly donated by statute or under the review jurisdiction provided in civil proceedings. In criminal proceedings, the High Court's revisionary jurisdiction under **sections 362 and 364 of the Criminal Procedure Code is limited** to subordinate courts and does not extend to decisions of the High Court itself.
7. In **Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd, [1989] KLR 1** the Court of Appeal emphatically stated that jurisdiction is everything and without it a court must down its tools. Once it is established that the court lacks jurisdiction, it cannot proceed any further in the matter.
8. Similarly, in **Karisa Chengo & 2 Others v Republic, [2015] eKLR** the Supreme Court reaffirmed that courts of concurrent jurisdiction cannot supervise or overturn each

other's decisions unless the law expressly grants such mandate. The court emphasized that jurisdiction flows from the Constitution or statute and cannot be arrogated by judicial craft or innovation.

9. Further, in **Samuel Kamau Macharia & Another v Kenya Commercial Bank Ltd & 2 Others**, the Supreme Court held that a court can only exercise jurisdiction as conferred by the Constitution or other written law and cannot expand its jurisdiction through interpretation.
10. The Applicant appears to invite this court to cloth itself with the constitutional powers to protect rights afforded by the constitution. The court has the jurisdiction to protect rights under the constitution but this does not transcend to this court supervising other Superior Court. If a Superior Court falls into error, the remedy is to be found in the next hierarchy of courts in this case the Court of Appeal.
11. The Court of Appeal summed up the law succinctly in **Peter Ng'ang'a Muiruri Vs. Credit Bank Ltd & 2 Others Civil Appeal No. 203 of 2006** where it 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.”***

12. The revisionary powers of the High Court are expressly provided under **section 362 of the Criminal Procedure Code**, which states that the High Court may call for and examine the record of any criminal proceedings before a subordinate court. The wording of the provision is clear and does not include proceedings emanating from the High Court itself. Consequently, this court cannot invoke revisionary jurisdiction over a sentence imposed by another Judge of the High Court.
13. The proper recourse available to the Applicant, if aggrieved by either conviction or sentence, lies before the Court of Appeal of Kenya pursuant to the appellate structure established under the Constitution and the Criminal Procedure Code. To hold otherwise would result in one High Court Judge exercising appellate jurisdiction over another High Court Judge, contrary to the hierarchical structure of the courts and established principles of judicial authority.

14. Accordingly, I find merit in the preliminary objection. This court lacks jurisdiction to review or interfere with the conviction and sentence imposed by Hon. Mary Kasango J. The application is therefore incompetent and is struck out for want of jurisdiction.

**Dated signed and delivered virtually this 14<sup>th</sup> day of May  
2026**

**A.K. NDUNG’U**

**JUDGE**