



**Langat v Republic (Miscellaneous Criminal Application
E002 of 2020) [2024] KEHC 1934 (KLR) (29 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1934 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
MISCELLANEOUS CRIMINAL APPLICATION E002 OF 2020**

RL KORIR, J

FEBRUARY 29, 2024

BETWEEN

NICODEMUS KIPKURUI LANGAT APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant was charged in the trial court with the offence of defilement contrary to Section 8(3) of the [Sexual Offences Act](#) No. 3 of 2006. Upon conclusion of the trial he was convicted and sentenced to serve twenty (20) years in prison.
2. In his undated Application filed on 30th October 2023, the Applicant applied for re-sentencing and relied on the ground of reconciliation.
3. The Applicant's stated that the victim and her family visited him in prison seeking reconciliation and it was his contention that he had embraced that idea hence the instant Application. It was the Applicant's further case that this court had the power and jurisdiction under Article 165(3) of the [Constitution](#) of Kenya to facilitate reconciliation.
4. The Applicant filed his written submissions on 6th March 2023 and stated that he was remorseful. He further submitted that he had since reformed and had made peace with God. That while in custody he had undertaken a course in carpentry and acquired relevant skills.
5. In mitigation, the Applicant submitted that he did not have any prior record of convictions. That he was the sole bread winner of his family and that his age was advancing.
6. The Respondent filed their Notice of No Objection dated 26th September 2023 and submitted that this court should uphold the conviction. On sentence, they submitted that this court should exercise



its discretion in reduction of the sentence stating further that the State would not be aggrieved if the Sentence was reduced.

Analysis and determination

7. I have gone through the court record and I have noted that the Applicant was convicted and sentenced in the trial court on 17th May 2017. The Applicant thereafter preferred an Appeal to this court being Bomet High Court Criminal Appeal Number 15 of 2017. The Appeal was heard and a Judgment was delivered by Muya J. on 13th June 2018 where he dismissed the Appeal and upheld the trial court's conviction and sentence.

8. 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 vs 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.”

9. In the case of *Daniel Otieno Oracha vs Republic* (2019) eKLR, the Petitioner had applied for review of a sentence imposed by a court of concurrent jurisdiction and Aburili J. held that: -

“ 14. 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.....

16. The judgment of Abida Ali-Aroni J. made in accordance with the law has not been challenged. This court cannot sit on appeal of its own judgment or of court of concurrent competent jurisdiction when the Petitioner had an opportunity to ventilate his grievance before the Court of Appeal even if it was to challenge sentence alone.

17. Good governance demands that cases be handled procedurally in the right forum. This is because the rule of the thumb that superior courts cannot sit in review/appeal over decisions of their peers of equal and competent jurisdiction much less those courts higher than themselves and that matters falling under the exclusive jurisdiction of Supreme Court under Article 163(3) cannot be dealt with by the High Court.....”

10. I am further persuaded by Njunguna J. in *Lawrence Kariuki Njeru vs Republic* (2021) eKLR, where she held that: -

“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.

The petitioner ought to ventilate the issue on the resentencing and/or excessive sentence at the Court of Appeal.....”



11. This court has already spoken with regards to the Applicant's sentence that was imposed by the trial court. Any further recourse that the Applicant has in regards to his sentence lies in the Court of Appeal and not in this court.
12. It was clear to this court from the record that the Appellant was aware of this procedure and had already preferred his appeal to the Court of Appeal. This Court's registry confirmed that both the trial file and the appeal file had been dispatched to the court of appeal. According to a letter dated 22nd November 2018 written by the Deputy Registrar of the Court of Appeal Nakuru to the Deputy Registrar of this Court the files were received in their registry.
11. In the end, I find that this court has no jurisdiction to review its own judgment and therefore the Application lacks merit and the same is dismissed.
11. The related Applications filed in this file are also dismissed.

Orders accordingly.

**RULING DELIVERED, DATED AND SIGNED AT BOMET THIS 29TH DAY OF FEBRUARY ,
2024**

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R. LAGAT-KORIR

JUDGE

Ruling delivered in the presence of Ms.Boiyon holding brief for Mr.Njeru for the State, Applicant acting in person and Siele(Court Assistant)

