



REPUBLIC OF KENYA



**KENYA LAW**  
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**Otieno v Republic (Criminal Revision E038 of 2024)  
[2024] KEHC 2100 (KLR) (28 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 2100 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MURANG'A  
CRIMINAL REVISION E038 OF 2024  
CW GITHUA, J  
FEBRUARY 28, 2024**

**BETWEEN**

**KENNEDY OCHIENG' OTIENO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant, Paul Kennedy Ochieng' Otieno, approached this court through a chamber summons dated 13<sup>th</sup> December 2023 seeking a review of the sentence imposed on him by the High Court in Criminal Appeal no. 62 of 2018.
2. The appeal record shows that the applicant had been charged and convicted of the offence of robbery with violence contrary to section 296 (2) of the *Penal Code* at the Senior Resident Magistrate's Court at Kandara in Criminal case no. 152 of 2017. Upon conviction, he was sentenced to a death sentence which was at the time the only sentence prescribed by the law for all capital offences.
3. As he was aggrieved by his conviction and sentence, he proffered an appeal to this court being Criminal Appeal No. 62 of 2018. The appeal was heard and determined on 27<sup>th</sup> of January 2023 by Hon. Justice Professor Sifuna who upheld the applicant's conviction but set aside the death sentence imposed by the trial court. The learned judge substituted the death sentence with a sentence of twenty years imprisonment which was to take effect from the date of sentence imposed by the trial court. It is this sentence that the applicant urges this court to review.
4. In support of his application, the applicant put forward several mitigating factors in his supporting affidavit and written submissions, for instance, that he was a first offender and that he had now reformed. He requested this court to revise the sentence substituted by the High Court on grounds that in substituting the sentence, the learned judge did not take into account the period he had spent



in lawful custody prior to the date he was sentenced. He re- iterated this contention in his brief oral submissions on the date the application was fixed for hearing.

5. The application was contested by the respondent. Learned Prosecution Counsel, Ms. Muriu, submitted that this court lacked jurisdiction to entertain the application given that the sentence sought to be reviewed was passed by a court of concurrent jurisdiction.
6. I have considered the application and the submissions made by both parties. I entirely concur with the submissions made by Ms. Muriu for the respondent because they reflect the correct legal position on the subject in issue. A reading of section 362 as read with section 364 of the [Criminal Procedure Code](#) which donates to this court it's revisional jurisdiction clearly shows that the said jurisdiction is to be exercised only over subordinate courts and not on any of the superior courts set out in the order of their hierarchy in article 162 (1) of the [Constitution](#).
7. For the avoidance of doubt, article 165 (6) of the [Constitution](#) provides that: "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."
8. From the above constitutional and statutory provisions, there is no doubt that the High Court only has supervisory jurisdiction over any person, public authorities or bodies and subordinate courts but not any of the superior courts which are the Supreme Court, the Court of Appeal, the High Court and the Courts of equal status. This means that once the High Court has made a decision on the merits of a case, that decision cannot be the subject of appeal or review by the same court since after making a decision, the court becomes *functus officio*.
9. Since the applicant was evidently aggrieved by the sentence this court through Hon. Prof. Justice Sifuna substituted for the one imposed by the trial court, he should have challenged the same by filing an appeal to the Court of Appeal instead of filing the current application.
10. Having found that I do not have jurisdiction to entertain the instant application, I must, as held in the celebrated case of [Owners of the Motor Vessel "Lillian S" V Caltex Oil \(Kenya\) Ltd](#) (1989) eKLR down my pen and say no more except to add that this application is incompetent and is hereby struck out for want of jurisdiction.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT MURANGA THIS 28<sup>TH</sup> FEBRUARY 2024.**

**C.W. GITHUA**

**JUDGE**

In the presence of :

The Applicant

Ms. Muriu for the respondent

Ms. Susan Court Assistant

