



**Cheserek v Republic (Miscellaneous Criminal Petition
E008 of 2023) [2024] KEHC 2971 (KLR) (22 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2971 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS CRIMINAL PETITION E008 OF 2023
JRA WANANDA, J
MARCH 22, 2024**

BETWEEN

JUSTINE KIPLIMO CHESEREK PETITIONER

AND

REPUBLIC RESPONDENT

RULING

1. The Petitioner was charged in Eldoret Senior Principal Magistrate’s Court Criminal Case No. 233 of 2018 with the offence of robbery with violence contrary to Section 296(2) of the Penal Code. He was convicted of the offence vide the Judgment dated 2/04/2019 and was on 6/05/2019 sentenced to serve a prison term of 15 years.
2. Now before this Court for determination is the Petitioner’s Application brought by way of the undated Notice of Motion filed in Court on 24/08/2023. He seeks sentence review described as “in accordance with Article 50 of the Constitution”.
3. The Application is then expressed to be brought under Section 379(4), 356 and 357 of the Criminal Procedure Code. A casual perusal of the said provisions reveals that the provisions cited have nothing to do with the prayers sought since they relate to extraneous matters such as Appeals and bail pending Appeal, issues that are not at play herein. The Petitioner has then also cited Article 50(2)(p) and (q) of the Constitution and the same is supported by the Applicant’s brief Affidavit.
4. In the Affidavit, the Petitioner reiterates the background set out above and depones further that he did not appeal to the High Court hence the instant Application, and that he is remorseful, repentant, reformed and rehabilitated as he has learned hard lessons while in custody. He begs for leniency.
5. I gave the parties liberty to file written Submissions but up to the time of concluding this Ruling, I had not come across any Submissions filed by either party.



Determination

6. The issue that arises for determination in this matter is “whether the Applicant’s sentence imposed by the Magistrate’s Court should be reviewed by this Court”.
7. The Petitioner admits that he was charged with the offence of robbery with violence contrary to Section 296(2) of the *Penal Code*, that he was convicted of the offence and was sentenced to serve a prison term of 15 years in the year 2019. He now wants this Court to reduce the sentence. As aforesaid, the provisions of law that he has cited have nothing to do with resentencing or review of sentence or Revision. He has also not disclosed the grounds under which he has approached the Court for re-sentencing.
8. It is trite law that the ordinary manner of challenging the decision of any Court is by filing an Appeal to a higher Court. The only other known ways for re-opening of a Court decision is by way of seeking Review from the same trial Court or by invoking the High Court’s power of Revision over subordinate Courts. The Petitioner does not allege that he was given a mandatory sentence (*Muruatetu case*) or that the time that he spent in custody before conviction was not factored in computing his sentence (Section 333(2) of the *Criminal Procedure Act*) or any other such common grounds normally relied upon by convicts in seeking for resentencing. He does not in any way also fault the trial Court for any transgressions. It is evident that his only reason for approaching this Court is on the ground of sympathy, which however, is not a known ground for reviewing a sentence. The Petitioner has therefore not brought himself under any of the known provisions of law or circumstances to warrant any interference of the sentence by this Court.
9. In the circumstances, and in the absence of any explanation regarding the strange manner in which the Petitioner has approached this Court, I decline to entertain the instant Application

Final Orders

10. In the premises, the Petitioner’s undated Notice of Motion filed herein on 28/08/2023 is hereby dismissed.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 22ND DAY OF MARCH 2024

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WANANDA J. R. ANURO

JUDGE

