



REPUBLIC OF KENYA



KENYA LAW
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**Waino v Republic (Criminal Revision 04 of 2020)
[2024] KEHC 4362 (KLR) (25 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4362 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL REVISION 04 OF 2020**

SC CHIRCHIR, J

APRIL 25, 2024

**IN THE MATTER OF ARTICLES 23(1), 27(1) 50 2(4)
AND 165 OF THE CONSTITUTION OF KENYA 2010**

AND

IN THE MATTER OF SECTION 354 AND 364 CPC CAP 75 LAWS OF KENYA

BETWEEN

DAVID WALIANO WANINGO APPELLANT

AND

REPUBLIC RESPONDENT

RULING

1. The petitioner herein was charged and convicted with the offence of robbery with violence before the chief magistrate court in Mumias and sentenced to death in criminal case No 417 of 2015.
2. He appealed to this court(Majanja J), and the judge upheld the conviction and quashed the death sentence basing his decision on the supreme court decision in *Francis Muruatetu & another v Republic* (2017) eKLR. He the invited him to make his mitigation
3. On 16th April 2018, Lady Justice Sitati heard his mitigation and sentenced him to 25 years with effect from 14/6/2016.
4. Through a Notice of Motion and “Application for mitigation and Sentence review”, the petitioner seeks for a further reduction of this sentence.
5. The application in my view is misplaced and this is the reason why:



The sentence of 25 years was passed by this court (Sitati J).The high court powers of revision under Article 165 and sections 362 to 367 of the [Criminal Procedure Code](#) is limited to that of the subordinate court, not superior courts.

6. The sentence was passed by a superior court and indeed a Judge of concurrent Jurisdiction. This court has no powers to revise orders issued by a judge of concurrent jurisdiction.
7. In short , this court has no jurisdiction to grant the powers being sought, and this petition is hereby struck off. Consequently, the petition is hereby struck off.

DATED, SIGNED AND DELIVERED AT NAIROBI VIA MICROSOFT TEAMS THIS 25TH DAY OF APRIL 2024.

S. CHIRCHIR

JUDGE

In the presence of:

Godwin- Court Assistant

Petitioner.

