



**Ruto v Republic (Miscellaneous Application E002 of 2023)
[2024] KEHC 4040 (KLR) (24 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4040 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MISCELLANEOUS APPLICATION E002 OF 2023**

SM MOHOCHI, J

APRIL 24, 2024

BETWEEN

EDMUND RUTO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Application before Court is seeking to be put on probation for remainder of his prison term. His application is supported by his undated affidavit in which he avers that he was charged with murder but undertook a plea bargain and was sentenced on the 5th of October 2022 to five (5) years imprisonment by Hon Prof J. Ngugi as he then was. He further deponed that the Court has jurisdiction to hear re-sentencing and met out appropriate sentence in line with Article 165 of the Constitution.
2. By January 2023 the Applicant is now back seeking to be sentenced to a probation sentence invoking the criminal revision jurisdiction of the Court as a basis.
3. This Court had directed that it being a criminal revision is a judge matter without need of arguments by either the Applicant or the Respondent and that the Court shall upon receipt of the Trial Court file peruse the same with a view of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed.

Issue for determination

4. The issue for determination is whether the Applicant has established a case for revision based on the provisions of Article 165 (6) of the Constitution and under Section 362 of the Criminal Procedure Code.

The Law

5. The High Court power of revision is set out in Article 165 which provides:



- (6) 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 over a superior Court.
 - (7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate Court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.
6. Section 362 of the [Criminal Procedure Code](#), empowers the High Court to call and examine the record of any criminal proceedings before any Subordinate Court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of any such subordinate Court.
 7. Section 364(1) of the [Criminal Procedure Code](#) provides: -

In the case of a proceeding in a subordinate Court the record of which has been called for or which has been reported for orders or which otherwise comes to his knowledge, the High Court may”-

 - (a) in the case of a conviction, exercise any of the powers conferred on it as a Court of appeal by section 354, 357 and 358, and may enhance sentence;
 - (b) In the case of any other order other than an order of acquittal alter or reverse the order.

(2) No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence.
 8. Article 165 of the [Constitution](#) bestows supervisory jurisdiction over subordinate Courts and tribunals.
 9. The Sentence thus imposed is for all intents and purpose a sentence by the High Court.
 10. This Court does not have criminal revision jurisdiction over the High Court and does not supervise Superior Courts.
 11. The Fact that an Accused person who voluntarily enters into a plea bargain is barred from preferring an appeal is indicative that the intention was to ensure that the sentence imposed remains unchallenged. The Applicant has not show cased the impugned nature of the sentence imposed.
 12. I accordingly find this Application to be without merit, the same is accordingly dismissed.

It is so ordered.

SIGNED, DATED AND DELIVERED IN OPEN COURT AT NAKURU ON THIS 24TH APRIL 2024

.....

MOHOCHI S.M

JUDGE

