



REPUBLIC OF KENYA



KENYA LAW
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Makokha v Republic (Petition 21 of 2021) [2024] KEHC 6422 (KLR) (30 May 2024) (Ruling)

Neutral citation: [2024] KEHC 6422 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
PETITION 21 OF 2021
SC CHIRCHIR, J
MAY 30, 2024**

BETWEEN

SHABAN ODONGO MAKOKHA PETITIONER

AND

REPUBLIC RESPONDENT

RULING

1. The Petitioner was charged with the offence of Robbery with Violence at the Chief Magistrate's Court at Mumias in Criminal case No. 1016/03, and was sentenced to death.
2. He appealed to the High Court and the Appeal was dismissed on both conviction and sentence on 16/12/2019.
3. He proceeded to the Court of Appeal where the Appeal was equally dismissed.
4. His grounds for review are that his rights were violated under Article 25(c), 26(1) and (2) and 50(2) of *the Constitution*.
5. He wants the court to consider his mitigation and review the sentence.
6. In his submissions, he has set out what he calls mitigating factors .

Determination

7. The Petitioner was charged with inter alia, the offence of Robbery with Violence at the Chief Magistrate's Court. He appealed to the High Court and the High Court dismissed his appeal. By his own admission, he proceeded to the Court of Appeal and the Court of Appeal equally dismissed his Appeal.



8. The Respondent in response submitted that, whereas the right to fair hearing includes a review or appeal, this Court has got no jurisdiction to review the said sentence as the matter had been decided by the Court of Appeal.
9. Looking at the petition and the submissions the petitioner has not demonstrated how his right to fair trial under Article 50 of *the Constitution* has been violated. What he calls mitigating factors are not relevant at this stage . If this court was to consider this petition on merit, the mitigating factors would be the ones subsisting at the time of sentencing, and not the current circumstances of the petitioner.
10. Further this matter had gone up to the Court of Appeal. This Court’s powers of revision as set out under Article 65 (5) of *the constitution* and section 362 and 364 of the criminal procedure code is limited to that of the subordinate courts . It has no jurisdiction to review the decisions of the high court , Court of Appeal or the supreme court.
11. The only power of review to the High Court when it comes to review of sentencing was the one bestowed by the supreme court in the muruatetu case (*Francis Muruatetu & Ano v Republic* (2021) e KLR). However the power to review sentences otherwise referred to as resentencing is limited to murder cases only.
12. To the extent that this matter has been determined by the court of Appeal ,I am in agreement with the prosecution that this court has no jurisdiction to grant the orders being sought.
13. The Petition is therefore incompetent and the same is hereby struck off.

DATED, SIGNED AND DELIVERED AT NAIROBI, VIA MICROSOFT TEAMS, THIS 30TH DAY OF MAY 2024.

S.CHIRCHIR

JUDGE

In the presence of:

Godwin – Court Assistant

The petitioner.

