



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CRIMINAL REVISION NO. E020 OF 2020

Consolidated with Criminal Revision No. E015 OF 2020

PATRICIO NJIRU KIRANGI.....1ST APPLICANT

JONATHAN NJERU MANUNGA.....2ND APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

A. Introduction

1. The applicants herein moved this court vide applications dated 23.11.2020 and 7.12.2020 respectively and wherein they sought review of their sentences. The two petitions were subsequently consolidated.

2. The applicants' case as can be deduced from the face of the said applications is that they were convicted of the offence of murder in Embu High Court Criminal Case No. 5 of 1997 and sentenced to death. They later appealed to the Court of Appeal at Nyeri vide **Criminal Appeal No. 8 of 2000** but the appeal was dismissed. The applicants averred further that, they filed petitions seeking resentencing pursuant to the Supreme Court's decision in **Francis Karioko Muruatetu & Another –vs- Republic Petition No. 15 and 16 of 2015** but the said petitions were dismissed. They are now coming again for review of the said sentence.

3. The applicants filed their written submissions in support of the application. Ms. Mati for the respondent opposed the applications on the grounds that similar orders were given in **Petition No. 141 of 2020** and the judge gave the reasons as to why the sentence could not be reviewed.

4. I have considered the applications herein and the submissions by the parties. As conceded by the parties herein, there has been previous application/petition before this court. I have perused the court record and I note that indeed the applicants filed a petition being **Petition No. 1 of 2018- Patricio Njiru Kirangi & Jonathan Njeru Manunga –vs- Republic** and which application was dismissed vide the ruling delivered by Muchemi, J. on 4.07.2019. The Learned Judge in dismissing the said petition considered all the relevant factors as were laid down by the Supreme Court in **Muruatetu's case**. What this means therefore is that the current sentence is the one which was imposed by the Court of Appeal and which was then confirmed by Muchemi, J.

5. The Learned Judge and this court are courts of concurrent jurisdiction. What the applicants are now seeking is for this court to review the decision of a court of concurrent jurisdiction. The jurisdiction of this court is provided for under article 165(3) of the Constitution and includes unlimited original jurisdiction in criminal and civil matters; jurisdiction to enforce bill of rights; appellate jurisdiction; interpretative jurisdiction, supervisory jurisdiction and any other jurisdiction, original or appellate, conferred on it by

legislation. This court does not have jurisdiction to review a decision of a court of equal status and its review jurisdiction is only limited to the decisions of subordinate courts and the same is provided for under Section 362 of the Criminal Procedure Code. Despite the applicants having brought the applications as “applications for revision”, the orders sought therein have the effect of reviewing the judgment of Muchemi J and which act this court does not have jurisdiction over.

6. In my view, if the applicants are not satisfied with the said ruling, they ought to have appealed to the Court of Appeal as it is the one with jurisdiction under Article 164(3) of the Constitution and Section 379(1) of the Criminal Procedure Code. This is appreciating the provisions of Article 50(2)(q) of the Constitution of Kenya 2010 which guarantees (as a tenet of fair hearing), the right of a person if convicted, to appeal to, or apply for review by, *a higher court* as prescribed by law.

7. It is trite that a court of law can only exercise jurisdiction as conferred by the constitution or other written law and cannot arrogate itself jurisdiction exceeding that which is conferred upon it by law, and that a court cannot expand its jurisdiction through judicial craft. (See **Samuel Kamau Macharia & Another V. KCB & 2 Others App. No. 2/2011**). Where a court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. A Court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction. (See **the Owners of Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] eKLR**).

8. It is my considered view that this court being bereft of jurisdiction ought to lay down its tools. As such, the applications by the two applicants herein are hereby dismissed for want of jurisdiction.

9. It is so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 17TH DAY OF MARCH, 2021.

L. NJUGUNA

JUDGE

.....*for the Applicant*

.....*for the Respondent*



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