



**Shikunzi v Republic (Criminal Miscellaneous Application
E027 of 2023) [2024] KEHC 10529 (KLR) (26 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10529 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL MISCELLANEOUS APPLICATION E027 OF 2023
SC CHIRCHIR, J
AUGUST 26, 2024**

BETWEEN

ZABLON SHIKUNZI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. What is coming up for determination is the Notice of motion dated 23/7/2023.
2. The Applicant has filed a series of documents, some which it is difficult to tell what exactly the Applicant is seeking for . However, after re-reading the documents a few times what I can decipher is that the Applicant is seeking a review of sentence . He has also asked this court to set aside the conviction.

Determination

3. In April 2010, the Applicant was convicted of murder and sentenced to death by Justice Lenaola. He moved to the court of Appeal under Kisumu Court of Appeal case No. 371 of 2012 to challenge both the conviction and sentence and the Appeal was dismissed on both grounds.
4. Nevertheless, he applied for re-sentencing under Misc. App. No. 23/2015 prompted by the supreme court decision in *Francis Miruatetu & Ano v. Republic* (2017) eKLR. In a ruling delivered on 26/8/2021, Justice Musyoka set aside the death sentence and substituted with 30 years.
5. The Applicant has made another trip to this court to complain about the same issues, namely allegation of wrongful conviction and harsh sentence.
6. The sentence has been revised by this court, pursuant to the directions given in *Muruatetu case* before and consequently this court has become *functio officio*.



7. In any event, the revisionary powers of the High Court under Article 165(6) of the *Constitution* is limited to revision of the lower court decisions but not a court of concurrent jurisdiction. This court therefore has no jurisdiction to revise Justice Musyoka's orders.
8. On the conviction, the Applicant's prayer is again is misplaced. The conviction of this court was affirmed by the court of Appeal. The Applicant's attempt to seek what is tantamount to an appeal from this court against the decision of the Court of Appeal is mischievous , an act of vexations and an abuse and misuse of the court process.
9. The Application is hereby dismissed.

DATED, SIGNED AND DELIVERED AT NAIROBI, VIA MICROSOFT TEAMS, THIS 26TH DAY OF AUGUST 2024.

S.CHIRCHIR

JUDGE

In the presence of:-

Godwin- Court Assistant

Zablon Shikunzi- The Applicant.

