



REPUBLIC OF KENYA



**Marende v Republic (Criminal Miscellaneous Application 132 of 2023)
[2024] KEHC 11769 (KLR) (27 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 11769 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL MISCELLANEOUS APPLICATION 132 OF 2023
RE ABURILI, J
SEPTEMBER 27, 2024**

BETWEEN

JOSEPH OPIYO MARENDE APPLICANT

AND

REPUBLIC RESPONDENT

(Being an Application for review of Conviction and Sentence in Siaya High Court vide Criminal Case No. E018 of 2021 delivered by Hon. Judge R.E Aburili - J dated 30th November, 2021)

RULING

1. The Applicant Joseph Opiyo Marende was convicted of the offence of Robbery with Violence vide Siaya PM Cr. Case No. 729/2016 on 24/1/2018. He appealed vide Siaya HCRA 9/2018 consolidated with HCRA Numbers HCRA 10/2018, HCRA 11/2018 and HCRA 12/2018.
2. That appeal was heard on merit and dismissed on 30/11/2020.
3. He claims that he has not appealed to this court of appeal and is before this court seeking review of the 50 years sentence by rehearing the case under Article 163 (3), (b) of the Constitution because the charge he of robbery with violence he faced had no details of when the offence was committed and date of arrest.
4. He also wants lenient definite sentence and that the court considers Section 333 (2) of the Criminal procedure Code on the period spent in custody.
5. I have considered the application dated 1/8/2023 and filed on 4/8/2023 and the affidavit in support though unsworn thereby remaining a statement of facts not verified. I have also considered the trial court record and HCCA 9/2020 and the submissions filed by the Applicant and the Respondent.
6. I am in agreement with the prosecution counsel that this court is functus officio and cannot therefore review sentence imposed by the trial court and upheld by this court on appeal. I find the application as



filed incompetent and an abuse of court process. The convict is relitigating his appeal by raising new grounds of appeal which he ought to have canvassed in the dismissed appeal. The sentence imposed was far much below the death sentence provided for under Section 296 (2) of the *Penal Code*.

7. I find the application filed on 4/8/2023 devoid of any merit. It is hereby dismissed. This file is closed. I so order.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 27TH SEPTEMBER, 2024

R. E. ABURILI

JUDGE

