



REPUBLIC OF KENYA



**Kipkurui v Republic (Miscellaneous Criminal Application E037 of 2023)
[2024] KEHC 11153 (KLR) (25 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 11153 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
MISCELLANEOUS CRIMINAL APPLICATION E037 OF 2023**

**RL KORIR, J
SEPTEMBER 25, 2024**

BETWEEN

HILLARY RUTO KIPKURUI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant was charged with the offence of murder contrary to section 203 as read with section 204 of the [Penal Code](#). The particulars of the offence were that on 21st and 22nd January 2016 at Silibwet area within Bomet County, he murdered Picoty Chepkirui.
2. This court (Muya J.) found the Applicant guilty of the lesser offence of manslaughter, convicted him on 31st January 2017 and sentenced him to twelve (12) years imprisonment.
3. The Applicant applied for re-sentencing and relied on the following grounds:-
 - i. That I am a Kenya adult of sound mind hence competent to swear this affidavit.
 - ii. That I am serving a 12 year sentence having been convicted of manslaughter.
 - iii. That I am repentant and remorseful.
 - iv. That I am reformed and rehabilitated.
 - v. That I am the sole breadwinner of my family who are suffering since my incarceration.
 - vi. That I am suffering after undergoing surgery.
 - vii. That I have never been charged with indiscipline since my imprisonment.
 - viii. That the Honourable Court be pleased to reduce my sentence and allow me to reintegrate back to the society.



- ix. That I plead with the Honourable Court to grant me a non-custodial sentence or a Community Service Order.

Applicant's submissions

4. The Applicant submitted that he had been sick and had undergone surgery. That he was not getting effective treatment while in prison. He further submitted that he wanted this court to review his sentence.

The State's/Respondent submissions

5. The Respondent submitted that the sentence of manslaughter was life imprisonment and that the Applicant's 12 year sentence was lenient as the offence was aggravating in nature. That the Applicant beat his wife and left her to die in the cold.
6. It was the Respondent's submission that the present Application was incompetent as the Applicant was tried, convicted and sentenced by a court of equal jurisdiction and his recourse lay in the Court of Appeal. That this court was not functus officio.

Analysis

7. As stated earlier in this Ruling, the Applicant was convicted of manslaughter and sentenced by this court (Muya J.) to serve 12 years imprisonment. I agree with the Respondent that once this court sentenced the Applicant it became functus officio and the Applicant's recourse lay with the Court of Appeal. In *Elishipha Muthoni v Republic* (2022) eKLR, Chepkwony J. held:-

“The law abhors that practice of a Judge sitting to review a Judgment or decision of another Judge of concurrent jurisdiction. This is because the rule of the thumb is that courts cannot sit in review/appeal over decisions of their peers of equal and competent jurisdiction much less those courts of higher Jurisdiction than theirs.

The court which ought to deal with an issue arising out of the decision of this court is 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 in appreciating the provisions of Article 50(2) (q) of the *Constitution* of Kenya, 2010 which guarantees the right of a person if convicted, to appeal to, or apply for review by, a higher court as prescribed by the law.”

8. Further, in *Lawrence Kariuki Njeru v Republic* (2021) eKLR, Njuguna J. held that:-

“..... Further this court is bereft of jurisdiction to review the said judgment as doing so would be tantamount to sitting as an Appellate court on the judgment of the Learned Judge and which act the law abhors.

The petitioner ought to ventilate the issue on the resentencing and/or excessive sentence at the Court of Appeal.....”

9. In the end, I find that this court has no jurisdiction to review the Applicant's sentence and therefore the Application herein lacks merit and the same is dismissed.

Orders accordingly.

RULING DELIVERED, DATED AND SIGNED THIS 25TH DAY OF SEPTEMBER, 2024.

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R. LAGAT-KORIR

JUDGE

Ruling delivered in the presence of the Applicant appearing in person, Mr Waweru for the Respondent and Siele (Court Assistant).

