



**Kago v Republic (Miscellaneous Criminal Application E258 of 2022)  
[2024] KEHC 16693 (KLR) (Crim) (20 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16693 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
MISCELLANEOUS CRIMINAL APPLICATION E258 OF 2022  
AM MUTETI, J  
DECEMBER 20, 2024**

**BETWEEN**

**EDWIN WAITHIRU KAGO ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant has approached this court by way of a chamber of summons seeking to have this court revisit the issue of sentence and consider imposing a lighter sentence.
2. He has moved this court under the provisions of Article 21, 22 (1) and 157 (6) (a) of the Constitution of Kenya.
3. He urges the court to admit the matter for a re-sentence hearing as per the Supreme Court directions in Petition Nos. 15 and 16 of 2015.
4. The applicant was convicted for the offence of murder and sentenced to suffer death.
5. He had been accused of killing his own father.
6. The applicant told this court that when he killed his father, he was simply acting out of anger over a land dispute. He was urged this court to consider that he is now reformed and that he regrets his actions.
7. The prosecution has opposed the application and indicated that this court lacks jurisdiction since the case was heard by the High Court which convicted and sentenced the applicant. Further it was contended by the prosecution that considering that the applicant had appealed to the court of appeal and his appeal was dismissed on both conviction and sentence.



8. Counsel for the prosecution urges the court to find that it cannot entertain the application to review a sentence which the court of appeal has imposed.
9. Jurisdiction is everything and without it this court cannot take any more step in the matter. See Owners of Motor Vessel Lilians (S) Ltd. Vs. Calter Oil (K) Ltd [1989] eKLR
10. The High Court cannot sit on an appeal against a decision of the court of appeal. The decisions of the court of appeal bind this court. The High court cannot therefore entertain an application for resentencing on a matter that the court of appeal has pronounced itself on.
11. The applicant has come before this court for an order that this court cannot grant for want of jurisdiction.
12. The application is therefore incompetent and the same is hereby struck out
13. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 20<sup>TH</sup> DAY OF DECEMBER 2024.**

**A. M. MUTETI**

**JUDGE**

In the presence of:

Court Assistant: Kiptoo

No appearance for the Applicant

Chebii for the Respondent

