



**Kibet v Republic (Miscellaneous Criminal Application E012 of 2024)  
[2024] KEHC 16240 (KLR) (19 December 2024) (Judgment)**

Neutral citation: [2024] KEHC 16240 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
MISCELLANEOUS CRIMINAL APPLICATION E012 OF 2024**

**E OMINDE, J  
DECEMBER 19, 2024**

**BETWEEN**

**GILBERT KIPROTICH KIBET ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

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 the 24<sup>th</sup> of September 2015 at Chebisas village in Elgeyo Marakwet County, the Appellant murdered Edna Chebet.
2. The Applicant pleaded not guilty initially, he then entered into a Plea Agreement dated 03/12/2020 and as a result, he pleaded guilty to the offence of Manslaughter contrary to section 202 as read with section 205 of the *Penal Code*. Upon considering the probation officers' report filed on 30/11/2020 and the mitigation of the Applicant, the court sentenced him to 8 years' imprisonment *vide* the judgment delivered on 03/12/2020.
3. The Applicant approached this court vide a Notice of Motion Application dated 12/01/2023 seeking the following orders;
  - i. That the period spent in remand be computed to the current sentence.
  - ii. That the said period so spent during the pre-trial period to start from the date of arrest.
4. The application is premised on the grounds on the face of it and the averments in the supporting affidavit sworn by the Applicant.
5. The parties were directed to prosecute the application *vide* written submissions The Applicant filed submissions dated 01/02/2024 whereas the respondent filed submissions dated 15/01/2024.



## **Appellants' submissions**

6. The appellant submitted that pursuant to article 50(2)(p)(q) and section 362 as read with section 364, he petitioned this court to review his sentence and include the time he spent in remand. He urged that the current sentence he is serving is punitive considering that he was a first-time offender and he left a vulnerable family and siblings who were solely depending on him. He stated that the time spent in custody constitutes adequate punishment and that having served two thirds of his sentence the objectives of sentencing have been achieved. Further, he urged that he has acquired skills in carpentry and joinery which shall be useful outside prison and that he is reformed as he has accepted Jesus Christ as his saviour. He prayed that the court find merit in his petition and grant the orders sought.

## **Respondents' Submissions**

7. Learned counsel for the state, S.G Thuo, submitted that when considering a matter for resentencing, the court must evaluate the evidence in respect of each case and determine whether there existed aggravating factors. It was his view that this was a case where the aggravating factors outweighed mitigation the applicant had offered. Additionally, he stated that the crime committed was heinous and the permissible sentence by law ought to have been a life sentence. He urged that the interests of justice demand that penance be paid through a retributive sentence.
8. The Respondent submitted that the 8-year sentence was lenient in the circumstances and this court is clothed with the powers to enhance the same to a life sentence and proceed to dismiss the application.

## **Analysis & Determination**

### **Jurisdiction to review a sentence by the High Court;**

9. This court is empowered by Article 165(6) of the *Constitution* of Kenya to review a decision by a subordinate court. Article 165(6) provides:-

The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.
10. Section 364(5) of the *Criminal Procedure Code* provides;
  - (5) When an appeal lies from a finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed.
11. The Supreme Court issued directions on 6.07.2021 in Petition No. 15 & 16 (Consolidated)- *Francis Karioko Muruatetu & Another v Republic*, whereby it directed that in re-hearing sentence for the charge of murder, both aggravating and mitigating factors such as the following, will guide the court;
  - (a) Age of the offender;
  - (b) Being a first offender;
  - (c) Whether the offender pleaded guilty;
  - (d) Character and record of the offender;
  - (e) Commission of the offence in response to gender-based violence;
  - (f) The manner in which the offence was committed on the victim;
  - (g) The physical and psychological effect of the offence on the victim's family;



- (h) Remorsefulness of the offender;
  - (i) The possibility of reform and social re-adaptation of the offender;
  - (j) Any other factor that the Court considers relevant.
12. The Supreme Court proceeded to hold that; -
- “viii. Where the appellant has lodged an appeal against sentence alone, the appellate court will proceed to receive submissions on re-sentencing.
  - ix. These guidelines will be followed by the High Court and the Court of Appeal in ongoing murder trials and appeals. They will also apply to sentences imposed under Section 204 of the Penal Code before the decision in *Muruatetu...*”
13. In *David Wanjala Wepukbulu v Republic* [2022] eKLR, faced with a similar situation, Justice O. Sewe expressed herself as follows on the applicability of *Muruatetu*;
- As to the applicability of the case of *Muruatetu*, the Directions of the Supreme Court dated 6 July 2021 are instructive, that *Muruatetu* applies only to the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code* and not any other offence.
14. In *Daniel Otieno Oracha v Republic* [2019] eKLR, the court held as follows;
- “14. The law abhors that practice of a Judge sitting to review a Judgment or decision of another Judge of concurrent jurisdiction. Reduction of sentence could only be considered by the Court of Appeal or if this court was sitting on appeal of a Judgment of the subordinate court or if the Petitioner was seeking for resentence after exhausting appeal mechanisms and not otherwise.....”
  - 16. The Judgment of Abida Ali-Aroni J made in accordance with the law has not been challenged. This court cannot sit on appeal of its own Judgment or of court of concurrent competent jurisdiction when the Petitioner had an opportunity to ventilate his grievance before the Court of Appeal even if it was to challenge sentence alone.
  - 17. Good governance demands that cases be handled procedurally in the right forum. This is because the rule of the thumb that superior courts cannot sit in review/appeal over decisions of their peers of equal and competent jurisdiction much less those courts higher than themselves and that matters falling under the exclusive jurisdiction of Supreme Court under Article 163(3) cannot be dealt with by the High Court.....”
15. In *Yasin Hamisi Bawala v Republic* [2020] eKLR Justice C. Kariuki, faced with a similar situation where the Applicant was charged with the offence of murder and sought a sentence review, held as follows;
- Only the Court of Appeal can change an award in sentence made by a High Court judge. This court cannot apply the provisions of section 333(2) of the *Criminal Procedure Code* to overturn a decision of a judge of equal jurisdiction.



16. In this case, the offence the Applicant was initially charged with was murder. After he entered into the plea bargain, the charge was reduced to manslaughter. In light of the decisions herein cited, it is clear that the Muruatetu case upon which the Applicant has hinged his Application for the reduction of his sentence is inapplicable. The said Application therefore lacks merit and the same is dismissed.
17. On the prayer that the period spent in remand be considered, the provision of Section 333(2) of the CPC is mandatory and courts therefore are bound to apply it in sentencing. I have considered the sentence and it is apparent that this period was not taken into account. The said proceedings also show that the accused was not released on bond pending trial.
18. The Applicant was first arraigned in Court on 21<sup>st</sup> September 2015 and he was sentenced on 3<sup>rd</sup> December 2020. This brings the period spent in remand custody to an aggregate of 5 years 2 months and 10 days. In therefore direct that this aggregate period of time be computed into the term of 8 years imprisonment meted out upon the Applicant
19. Right of Appeal 14 days

**READ DATED AND SIGNED AT ELDORET ON 19<sup>TH</sup> DECEMBER 2024**

**E. OMINDE**

**JUDGE**

