



REPUBLIC OF KENYA



**Gatonye v Republic (Criminal Revision E113 of 2021)
[2023] KEHC 1371 (KLR) (Crim) (23 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 1371 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL
CRIMINAL REVISION E113 OF 2021**

JM BWONWONG'A, J

FEBRUARY 23, 2023

BETWEEN

RICHARD GATHIRI GATONYE 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* (cap 63) Laws of Kenya.
2. He was convicted for the offence of manslaughter and sentenced to serve twenty (20) years imprisonment on August 22, 2013. He filed the present application seeking resentencing under the provisions of section 333 (2) of the *Criminal Procedure Code* (cap 75) Laws of Kenya.
3. The grounds raised in support of the application are that the trial court failed to take into account the 5 years and 2 months spent in pre-trial remand custody.
4. He urged the court to be guided by the judiciary sentencing guidelines and reduce his sentence.

The applicant's written submissions

5. The applicant submitted that the sentence of 20 years, he is currently serving should commence from the date of his arrest.



The respondent's written submissions

6. Mr Mutuma, learned counsel, for the respondent submitted that the court should take into account that a life was lost due to the applicant's actions. Further, the aggravating circumstances ought to be considered.

Issues for determination

7. I have considered the application, the mitigation and the respondent's submissions.
8. I find that the issue that arises for determination is whether this court has jurisdiction to entertain and determine the application.

Analysis and determination

9. The applicant seeks re-sentencing of the 20-year imprisonment term imposed by the trial court (P Mwilu, J, as then was). The applicant stated that he spent 5 years and 2 months in the pre-trial remand custody.
10. I find that the sentence of 20 years was handed down by this court (P Mwilu, J, as then was).
11. I further find that the applicant has not cited any statutory law that enabled him to re-open this case. My research in this regard found no such enabling statutory law. Instead my research found that the applicable law is in the decision of this court ((J M Bwonwong'a, J) in Misc Criminal Application no E138 OF 2022 *Lucy Wangare Mubia v Attorney General & 2 Others*, Nairobi High Court Misc Criminal Application no E138 OF 2022, in which this court pronounced itself as follows:

“Furthermore, it is a cardinal rule of law that litigation must come to end. Once a case has been heard and concluded, that is the end of that case and may only be appealed or reviewed if there is in place a statutory provision for such an appeal or review. In the absence of an authorizing statute the aggrieved party cannot appeal or seek review. In this regard, the Court of Appeal pronounced itself in *Kiwala v Uganda* [1967] EA 758 at page 761 letters F and G, as follows:

“The general rule of law is expressed by the maxim, “*interest reipublicae ut sit finis litium.*” Once an act is the subject of litigation and final judgement is entered by a competent court that is the end of the matter, except there is statutory provision providing for further consideration of that judgement on appeal or, as in this case, on revision; but once that right has been exercised and the appeal or revision heard then again the litigation comes to an end unless there is again statutory provision for further appeal or revision. The law in this case only provides for one revision; no provision is made for further revision or for the High Court to revise its own order of revision. The court once it has exercised its power of revision is “*functus officio*” and has no authority to subsequently revise its own order.”

Furthermore, the said Court of Appeal also observed that:

“The provision of this section (337 (1) and (7) of the Uganda CPC) would apart from any other reason make it abundantly clear that once a case has been revised by the High Court, that court becomes “*functus officio*” and that revision is final unless there is an appeal to this court.” at page 762 letter C.”



12. Based on the foregoing, I find that this court is functus officio and lacks jurisdiction to entertain and determine this application.

13. In the premises, the application fails and is hereby struck out for being incompetent.

RULING SIGNED, DATED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 23RD DAY OF FEBRUARY 2023.

J M BWONWONG'A

JUDGE

In the presence of-

Mr Kinyua: Court Assistant

The applicant in person.

Ms Edna Ntabo for the respondent.

