



**Mukiti v Republic (Miscellaneous Criminal Application
E032 of 2021) [2023] KEHC 2582 (KLR) (29 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2582 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
MISCELLANEOUS CRIMINAL APPLICATION E032 OF 2021**

**JN ONYIEGO, J
MARCH 29, 2023**

BETWEEN

KITENGU MUKITI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant herein was charged with the offence of murder contrary to section 203 as read out with section 204 of the penal code. Having returned a plea of not guilty, the matter proceeded to full trial.
2. Upon conclusion of the trial, the applicant was found guilty and accordingly sentenced to serve 25 years' imprisonment on the 28-2-2019.
3. The applicant has however moved this court under what he refers to as a petition which is not dated but filed on 15-12-2021 seeking review of the sentence to take into account the period spent in remand custody.
4. In response, the state/ respondent filed grounds of opposition dated 7-6-2022 opposing the application on grounds that it is incompetent, lacks merit; the court is functus officio and that, the sentence is well within the law.
5. I have considered the application herein and the response thereto. It is trite law that under section 333 (2) of the *Criminal Procedure Code* a trial court ought to consider the period spent in remand custody by an accused person before pronouncing sentence.
6. Although in this case section 333 (2) of the *Criminal Procedure Code* was not complied with, this court being the trial court cannot review its own sentence as it is functus officio. Accordingly, the orders sought cannot apply. Consequently, the application before this court is incompetent hence dismissed.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS...29TH DAY OF MARCH, 2023.



J. N. ONYIEGO

JUDGE

In the Presence of:

Applicant

Mr. Kihara for the state.

Martin/ Mohamed- Court Assistants.

J. N. ONYIEGO

JUDGE

