



**Kithia v Republic (Miscellaneous Criminal Application  
E037 of 2022) [2023] KEHC 18021 (KLR) (31 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 18021 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
MISCELLANEOUS CRIMINAL APPLICATION E037 OF 2022**

**EM MURIITHI, J**

**MAY 31, 2023**

**BETWEEN**

**JAKHIM KOOME KITHIA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant herein filed an application on 2/8/2022 under articles 25(c), 27(1), (2), 28, 29 and 50(2)(p) of *the Constitution* seeking that, “This honorable court be pleased to invoke the provisions of section 333(2) of the *Criminal Procedure Code* into my sentence of 15 years from the date of arrest on September 15, 2014.”
2. The request is premised on the grounds that the applicant was charged with robbery with violence and sentenced to death, but on appeal, the sentence was reduced to 15 years. He now prays that the said sentence does commence from the date of arrest being 15/9/2014, in line with the provisions of section 333(2) of the *Criminal Procedure Code*. According to him, the respondent will not suffer any prejudice if the orders sought are granted.
3. The respondent opposed the application vide grounds of opposition dated 26/4/2023 that, “The applicant’s appeal on conviction was dismissed, however the sentence was reduced from life imprisonment to 15 years as submitted by the applicant. As such, this court took into consideration the circumstances of the offence and the sentence passed was not only lenient, but also took into account the time spent in custody under section 333 (2) of the *Criminal Procedure Code*; In reduction of the sentence, this court (1<sup>st</sup> appellate court) exercised its discretion judiciously; This court has no jurisdiction as a further review of sentence will be tantamount to sitting on appeal of its orders; and in the upshot the respondent prays that the applicant’s application has no merit and it be dismissed accordingly.”



## **Analysis and Determination**

4. The applicant was sentenced by the trial court to death but on appeal, the sentence was reduced to 15 years imprisonment. The applicant has not exhibited the appellate court's decision to enable this court gauge whether the provisions of section 333 (2) of the *Criminal Procedure Code* were taken into consideration during his resentencing. Besides, the reduction of the applicant's sentence from death to 15 years imprisonment was more than lenient and this court is undoubtedly convinced that the appellate court took into account the applicant's mitigation, the circumstances of the offence and its gravity together with the period the applicant had been in custody in handing him the sentence of 15 years.

## **Orders**

5. Accordingly, for the reasons set out above, the court finds that the application has no merit and the same is dismissed.

*Order accordingly.*

**DATED AND DELIVERED THIS 31<sup>ST</sup> DAY OF MAY, 2023.**

**EDWARD M. MURIITHI**

**JUDGE**

**APPEARANCES:**

Mr. Masila for D.P.P.

Accused in person.

