



**Kiai v Republic (Criminal Revision E033 of 2023)  
[2023] KEHC 19645 (KLR) (30 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 19645 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA  
CRIMINAL REVISION E033 OF 2023  
JN ONYIEGO, J  
JUNE 30, 2023**

**BETWEEN**

**ISMAEL ALI KIAI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(From Original Conviction and Sentence OF Hon. Lady  
Justice Abida Ali Aroni Criminal Case No. 3 of 2018)*

**RULING**

1. The applicant herein was on March 5, 2018 jointly with another charged with the offence of murder contrary to section 203 as read out with section 204 of the CPC. Particulars were that on 2<sup>nd</sup> day of March, 2018 at Bulla Rahma in Garissa County within Garissa jointly murdered Abdikadir Radu Momoi.
2. Upon returning a plea of not guilty, the matter proceeded to full trial. Consequently, the Applicant and his co-accused were convicted and sentenced to serve 15 years' imprisonment on October 28, 2021.
3. Subsequently, the applicant herein moved to this court on 14<sup>th</sup> February, 2023 through a Chamber summons seeking the court to review its sentence by taking into account the 4 years' period spent in remand custody.
4. The application is supported by an affidavit which is undated but signed in which the applicant averred that he did not wish to pursue an appeal hence the prayer for review of sentence.
5. During the hearing, the applicant basically reiterated his averments contained in the affidavit in support of the application urging the court to consider the period spent in remand custody. In response, the respondent opposed the application arguing that it has become functus officio.



6. I have considered the application herein, affidavit in support and the response thereof. I have perused the sentence of Hon. Justice Abida Aroni delivered on October 28, 2021. The Hon. Judge stated and I quote.

“In sentencing, I have also considered the fact that the accused person spent about 4 years in custody awaiting trial. Considering all the above the accused persons are each sentenced to 15 years in prison”

7. With the above statement in mind, it is apparent that the court did properly apply section 333 (2) of the Criminal Procedure Code and there is no reason to seek review of Sentence on the same ground. I do agree with the state that the court has become funtus officio. Accordingly, I do not find merit in the application hence the same is dismissed.

Right of appeal 14 days.

**DATED, SIGNED AND DELIVERED AT GARISSA THIS 30<sup>TH</sup> DAY OF JUNE, 2023.**

.....  
**J.N. ONYIEGO**  
**JUDGE**

