



**Luvisia v DPP (Criminal Revision E229 of 2023)  
[2023] KEHC 19566 (KLR) (30 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 19566 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CRIMINAL REVISION E229 OF 2023  
PJO OTIENO, J  
JUNE 30, 2023**

**BETWEEN**

**ELPHAS ALI LUVISIA ..... APPLICANT**

**AND**

**DPP ..... RESPONDENT**

**RULING**

1. By his application dated February 24, 2023, the Applicant seeks, in the main, an order that the Court revisits his sentence in accordance with Section 333(2) *Criminal Procedure Code*, with the sole purpose that the sentence meted against him be ordered to run from the date of his arrest and arraignment.
2. It is noteworthy that prior to the instant application, the Applicant had filed Kakamega HCCR Petition No 29 of 2018 seeking for resentencing which Petition was determined by the Court on and dismissed on account of the fact that the Court lacked jurisdiction to entertain the matter on the principles laid by the Supreme Court in *Francis Karioko Muruatetu & Another v Republic* [2021] eKLR.
3. It is also noted that there was Kakamega HCCR Appeal No 152 of 2009 which reduced the sentence from death to life imprisonment.
4. The third matter which preceded the instant application was Kakamega HCCR Misc Application No 54 of 2013 seeking that the Court orders that there be a retrial of the Butali Criminal Case No 156 of 2009 where the Applicant was tried, convicted and sentenced. That application was dismissed for reasons that it was brought after inordinate delay.
5. Now that the Applicant lost the request for retrial but succeeded in having the sentence reduces from death to life imprisonment, the question that must be posed and answered is whether this Court has the power to revisit and reconsider whether the sentence he serves currently is lawful or proper. The



coronary to that question is whether there would be any benefit visited upon the Applicant if the life imprisonment term he now serves was to be directed to commence from a specific date.

6. It is the learning of this Court that once the appeal was concluded in favour of the Applicant and sentenced reset, the current sentence being served is that conferred on appeal by the High Court and the same Court has no power of revision over its own orders. To that extent there is no jurisdiction in this Court to reconsider the legality or propriety of the sentence the Appellant currently served.
7. However, if the Court was to delve on the merits, the current sentence is one for life. It is an indeterminate term not capable of being subject to exactitude computation to ascertain when it shall terminate. To the Court, therefore, no meaningful purpose would be served by the invocation of the mandatory provisions of Section 333(2) *CPC*.
8. In conclusion, the application is determined to have no merit. It is dismissed. Let the Court file be closed.

**DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 30<sup>TH</sup> DAY OF JUNE 2023.**

**PATRICK J. O. OTIENO**

**JUDGE**

**In the presence of:**

Applicant in person

Ms. Chala for the Respondent/Prosecution

Court Assistant: Polycap

