



**Mohamed v Republic (Miscellaneous Criminal Application
E013 of 2023) [2023] KEHC 21200 (KLR) (28 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 21200 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
MISCELLANEOUS CRIMINAL APPLICATION E013 OF 2023
JN ONYIEGO, J
JULY 28, 2023
IN THE MATTER OF: ARTICLE 25 (C) OF THE CONSTITUTION
OF KENYA
IN THE MATTER OF; ARTICLE 50 (2)(Q) OF THE CONSTITUTION
OF KENYA
AND
IN THE MATTER OF: SECTION 329 OF THE CRIMINAL
PROCEDURE CODE
AND
IN THE MATTER OF: SECTION 364 OF THE CRIMINAL
PROCEDURE CODE
AND
IN THE MATTER OF; ARTICLES 23 AND 159 OF THE
CONSTITUTION OF KENYA
AND
IN THE MATTER OF: HCCRA NO. 002 OF 2015 AT GARISSA HIGH
COURT
AND
IN THE MATTER OF; CRIMINAL CASE NO. 1104 OF 2012 AT
GARISSA LAW COURT**

BETWEEN

ABDIAZIZ ADAN MOHAMED APPLICANT



AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged with 9 counts of which he was convicted of count 1 and 2 for engaging in acts intended to cause grievous harm contrary to section 231 of the *Penal Code*. He was consequently sentenced to life imprisonment for each of the two counts.
2. Dissatisfied with both the conviction and sentence, he appealed to Garissa High Court vide Cr Case 2/2015. Upon hearing the appeal, Justice Dulu upheld the conviction and substituted the sentence of life imprisonment to 30 years' imprisonment for each count.
3. Undeterred, he moved to this court again vide an undated chamber summons but filed on June 5, 2023 seeking review of the sentence on grounds that; he had reformed; he was remorseful and that, the sentence was excessive. The state opposed the application stating that the court was *functus officio*.
4. I have considered the application herein and response thereof. There is no dispute that this court has had the chance to consider the issue of sentence and in its wisdom reduced it from life sentence to 30 years' imprisonment.
5. To that extent, this court has no legal ground to stand on to further review the sentence. I do agree with Mr Kihara for the state that the court is *functus officio*. Accordingly, the application is dismissed for lack of merit.

DATED, SIGNED AND DELIVERED VIRTUALLY AT GARISSA THIS 28TH DAY OF JULY, 2023

.....

J.N. ONYIEGO

JUDGE

