



**Mulai v Republic (Miscellaneous Criminal Application  
E025 of 2021) [2023] KEHC 21700 (KLR) (28 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 21700 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA  
MISCELLANEOUS CRIMINAL APPLICATION E025 OF 2021**

**JN ONYIEGO, J**

**JULY 28, 2023**

**BETWEEN**

**SAMMY MULAI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant was charged before Garissa High Court with the offence of murder contrary to Section 203 as read with Section 204 of the *Criminal Procedure Code*. Particulars were that on February 9, 2012 at Nzale Sub-location of Migwani District within Kitui County, murdered Mwanzia Nyeki. He was subsequently sentenced to serve 30 years' imprisonment on March 11, 2014.
2. Aggrieved by the conviction and sentence, he preferred an appeal to the Court of Appeal vide Criminal Appeal No. 150/2019. The appeal was however dismissed.
3. The appellant is now vide an undated application, seeking review of sentence to take into account the period spent in remand custody pursuant to Section 333(2) of the *Criminal Procedure Code*.
4. The state through Mr. Kihara opposed the application for review of sentence arguing that the High Court is functus officio.
5. I have considered the application herein and the response thereof. This court is being asked to review the sentence of 30 years imposed by the High Court and later confirmed by the Court of Appeal.
6. A perusal of the Petition to the Court of Appeal reveals that the appeal was against conviction and sentence. Upon appealing to the Court of Appeal and a decision having been made, this court became functus officio. The High Court cannot revisit the Court of Appeal decision again to render a revised sentence.



7. Further, under Article 165 (6) & (7) of the *Constitution*, this court has supervisory jurisdiction only over sub-ordinate courts and not superior courts. To that extent, I do not find merit in the application hence the same is dismissed.

8. Order accordingly.

**DATED, SIGNED AND DELIVERED THIS 28<sup>TH</sup> DAY OF JULY, 2023**

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**J. N. ONYIEGO**

**JUDGE**

