



**Mutemi v Republic (Miscellaneous Criminal Application  
E007 of 2022) [2023] KEHC 21612 (KLR) (28 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 21612 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA  
MISCELLANEOUS CRIMINAL APPLICATION E007 OF 2022**

**JN ONYIEGO, J**

**JULY 28, 2023**

**BETWEEN**

**ALEXANDER MBEVO MUTEMI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant herein was charged before Garissa High Court with the offence of murder contrary to Section 203 as read with Section 204 of the Penal code. Particulars were that on 14<sup>th</sup> November, 2013 at Kavililo Village Nzauni location in Mwingi West District within Kitui County murdered Stella Makaa Makuthu.
2. Upon conclusion of the trial, the appellant was convicted and sentenced to death on 13<sup>th</sup> December, 2017. Aggrieved by both the conviction and sentence, he appealed to the court of appeal under criminal appeal number 119/2018. Upon canvassing the appeal, conviction was upheld and sentence reduced to 30 years.
3. Subsequently, the applicant moved to this court seeking review of the sentence imposed by the court of appeal terming it excessive and harsh. That the court of appeal did not consider the period spent in remand custody pursuant to section 333 (2) of the Criminal Procedure Code.
4. Mr. Kihara representing the State opposed the application terming it an abuse of the court process and that this court is functus officio.
5. I have considered the application herein seeking review of the sentence of 30 years imposed by the court of appeal so as to take into account the period spent in remand custody pursuant to Section 333(2) of the Criminal Procedure Code.



6. It is trite law that under Article 165 (6) and (7) of *the Constitution*, the High Court is bestowed with supervisory powers over sub-ordinate courts and not superior courts. Equally, under Section 362 and 364 of the Criminal Procedure Code, the High Court has supervisory powers over sub-ordinate courts.
7. What the applicant is seeking here is for this court to exercise supervisory jurisdiction over a superior court which is even senior. This court has no mandate to review or revise a determination by the Court of Appeal. The applicant should have moved the court of appeal to review its orders as this court is functus officio.
8. The application is dismissed for lack of merit.

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

**J. N. ONYIEGO**

**JUDGE**

