



**Masha v Republic (Miscellaneous Criminal Application E127 of 2019)
[2022] KEHC 12376 (KLR) (28 January 2022) (Ruling)**

Neutral citation: [2022] KEHC 12376 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
MISCELLANEOUS CRIMINAL APPLICATION E127 OF 2019**

**JN ONYIEGO, J
JANUARY 28, 2022**

BETWEEN

FIKIRINI CHARO MASHA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant herein was charged with the offence of committing unnatural offence contrary to section 162(b) of the Penal Code. Upon hearing the case, the trial court convicted and sentenced him to 14 years imprisonment. Aggrieved by both conviction and sentence, he appealed to the High Court vide Voi high court criminal appeal no 25 of 2018. After hearing the said appeal, Justice Amin delivered her judgment on March 12, 2019 thus confirming the conviction. The honourable judge however reduced the sentence to 10 years imprisonment.
2. Subsequently, the applicant moved to this court again through an undated chamber summons seeking review of his sentence by reducing the same by four months being the period he was in remand custody pending trial. During the hearing, he urged the court to take into account the said period.
3. In response, Mr Chirchir for the state opposed the application urging that this court has no jurisdiction to entertain the application. That the appeal against sentence was considered by a court of the same jurisdiction and if he was dissatisfied, he should have appealed against judge Amin's judgement.
4. I have considered the application herein, oral submissions by both the applicant and the respondent. There is no dispute that the applicant was convicted and sentenced to 14 years' imprisonment which was later reduced to 10 years by the high court. From the lower court and high court record, there was no mention by either court that accused's period in remand custody was taken into account during sentencing. The question then is, which court is supposed to correct that omission?



5. It is trite that once a court has pronounced itself in a criminal trial by making final orders, there is no room for the same court to go round and temper with its orders except in murder cases pursuant to the famous muruatetu case. The court simply ceases to exercise jurisdiction hence it becomes *functus officio*. I am alive to the fact that sentencing is a matter of discretion by the sentencing court to which even an appellate court would rarely interfere with unless the sentencing court applied wrong principles in sentencing or the sentence imposed is excessive. See *Josiah Mutua Mutunga & another v Republic* (2019) eKLR.
6. In view of the circumstances surrounding this case, I am in agreement with Mr Chirchir that the only recourse available to the applicant was to appeal to the court of appeal challenging the excessive sentence if any. This court having pronounced itself on sentence during the appeal, it has no jurisdiction to review its orders. Accordingly, the application is dismissed.

DATED DELIVERED AND SIGNED IN OPEN COURT THIS 28DAY OF JANUARY 2022

J N ONYIEGO

JUDGE

