



REPUBLIC OF KENYA



KENYA LAW
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**Mwandaa v Republic (Miscellaneous Application E009 of 2021)
[2022] KEHC 12532 (KLR) (28 January 2022) (Ruling)**

Neutral citation: [2022] KEHC 12532 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
MISCELLANEOUS APPLICATION E009 OF 2021
JN ONYIEGO, J
JANUARY 28, 2022**

BETWEEN

SAMUEL MWACHOFI MWANDAA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant herein was charged with the offence of murder to which he was convicted and sentenced to serve 20 years imprisonment on 16th September 2019. Vide a chamber summons filed on 4th February 2021, the applicant sought orders of the court reviewing its sentence by reducing it after taking into account the period spent in remand custody. He contended that he has since reformed having undergone counselling and undertaken theology course while in prison.
2. After perusing the court file, the court ordered for approbation officer's report containing remarks from the victim's family. The report was subsequently filed with the relatives of the victim opposing the proposed reduction of sentence.
3. During the hearing, the applicant urged the court to consider the over three years period he spent in custody pending trial. In response, Mr. Chirchir for the respondent opposed the application stating that the applicant ought to have filed an appeal if he was aggrieved with the sentence. He further contended that this court has no supervisory role over its decisions. In his view, the court is functus officio.
4. I have considered the application herein and the response thereto. There is no dispute that the applicant was charged with a capital offence whose sentence stretches to a death penalty. He was convicted of murder and sentenced to a jail term. I am aware that muruatetu case introduced a new trajectory in resentencing of murder related convicts. However, the discretionary powers to resentence still remains



with the sentencing court. In this case, the sentencing court took into account circumstances under which the offence was committed and spared the appellant a death penalty.

5. The appellant should appreciate that he was lucky enough to escape the rope. From the probation officer's report, the victim's family have not fully recovered from the effect of losing their beloved one. Further, if the applicant is complaining that the court applied the law improperly by failing to do what it was bound to do by law, then, that is aground for appeal and not under muruatetu sentencing principle.
6. The only recourse available to the appellant was to appeal which recourse is now spent. It is trite that sentencing is within the discretion of the sentencing court which an appellate court can only interfere with if the sentencing court applied wrong principles or considered irrelevant factors or failed to take into account relevant factors. See *Abamad Abolfathi Mobammed&another v Republic*(2018)e KLR.
7. In view of the above holding, I do not find any good reason to interfere with the sentence imposed. Accordingly, I am in agreement with Mr. chirchir that this court is functus officio for lack of jurisdiction. Consequently, the application is dismissed.

DATED, DELIVERED AND SIGNED IN OPEN COURT AT VOI THIS 28TH DAY OF JANUARY 2022.

J.N.ONYIEGO

JUDGE

