



**Simiyu v Republic (Miscellaneous Criminal Application
53 of 2019) [2022] KEHC 10302 (KLR) (24 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 10302 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
MISCELLANEOUS CRIMINAL APPLICATION 53 OF 2019**

WM MUSYOKA, J

JUNE 24, 2022

BETWEEN

EVANS SIMIYU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The application is undated and was filed herein on July 3, 2019. It seeks that I review the sentence that the applicant has been serving since 2010, upon a conviction of defilement, and convert it to probation, to be served for the remainder of the duration of the custodial sentence imposed.
2. Once a person is convicted, and exhausts his appeals, the execution of the sentence of imprisonment is the responsibility of the Executive, through the prison system. If the convict feels that he has sufficiently reformed, and need has arisen for his sentence to be reviewed or reduced or substituted, that remains the mandate of the Executive, through remission or the exercise of the prerogative of mercy. Even the decongestion exercises that the High Court often engages in, are done at the request of the Executive, through the Ministry responsible for prisons and other rehabilitative institutions. The role of the court is to impose sentence, and can only review through the legal structures provided by the law, of appeal and revision, and by way constitutional petition, where there is abuse or violation of rights. What the petitioner is inviting me to do is not procedural, and blurs the separation of powers principle, and he should pursue administrative avenues, through the Executive, for review of his sentence.
3. The undated application filed on July 3, 2019 is, therefore, incompetent, and I hereby strike it out. Let copies of these proceedings be availed to the applicant and to the Director of Public Prosecutions.

DELIVERED, DATED AND SIGNED AT KAKAMEGA ON THIS 24TH DAY OF JUNE, 2022

WM MUSYOKA

JUDGE



Erick Zalo, Court Assistant.

Evans Simiyu, the petitioner, in person.

Mr. Mwangi, instructed by the Director of Public Prosecutions, for the respondent.

