



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT BOMET**

**MISC. CRIMINAL APPLICATION NO. E053 OF 2021**

**ERICK KIPNGETICH YEGON.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. The Applicant Erick Kipngetich Yegon was charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the charge were that on 18<sup>th</sup> April 2018, at Kapsimba sub-location in Chepalungu Sub-County in Bomet County murdered Gilbert Kipkirui Yegon.

2. The trial proceeded before Muya J. who heard 3 witnesses. When the matter came up for directions before me on 27<sup>th</sup> October 2020, defence Counsel told the court that they wished to enter into plea negotiations with the State. Subsequently the parties filed a Plea Agreement on 9<sup>th</sup> February 2021.

3. The court accepted the agreement and the Accused answered to the lesser charge of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code.

4. The Accused pleaded guilty and was convicted on his own guilty plea. Subsequently after the sentence hearing, the court considered all factors and sentenced the Accused to serve 7 years' imprisonment.

5. The present application filed on 10<sup>th</sup> August 2021 seeks a review of that sentence on the main ground that the sentence did not take into consideration or include the 3 years the Accused had spent in pre-trial custody. The application is stated to be brought under Section 137 (i) Sub-Section 2 (a) and Section 333 of the Criminal Procedure Code.

6. This court being the court that convicted and sentenced the Applicant has no power to reconsider the sentence. It is now *functus officio*. The recourse that the Applicant has is to the court of Appeal. For the comfort of the Applicant however, this court in delivering sentence dated 29<sup>th</sup> July 2021 stated that:

***“(16) In the end, I sentence the Accused to serve 7 years imprisonment from today. In sentencing the Accused, I have taken into account the time he has already spent in pre-trial custody.”***

7. I agree with the holding of Lesiit J. (as she then was) in in **Moses Otieno Dola V. R, Criminal Revision Case No. 193 of 2019, (2021) eKLR** where on considering a similar application held that:-

***“The sentence in this case was imposed by Lagat-Korir, J, a court of parallel jurisdiction, which was the trial court in this matter. That means that if the Applicant was aggrieved in the manner in which the period he spent in custody before sentence was considered, or not, his recourse is not before this court. His grievance should be addressed on appeal before the Court of Appeal.***

***He cannot return back to this same court to consider his grievance, for two reasons. First and foremost, it is this court which passed the impugned sentence. Having delivered itself on the matter, this court is functus officio. Secondly, the grievance he now has should be a ground of appeal which can only be considered on appeal before the Court of Appeal.”*** (Emphasis added)

8. In the final analysis, I find that the Applicant's recourse is to the court of appeal. The application is thus struck out.

9. Orders accordingly.

**RULING DELIVERED DATED AND SIGNED THIS 21<sup>ST</sup> DAY OF DECEMBER, 2021.**

.....

**R. LAGAT-KORIR**

**JUDGE**

**Ruling delivered in the presence of the Applicant, Mr. Murithi for the Respondent and Kiprotich (Court Assistant)**