



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BOMET

MISC. CRIMINAL APPLICATION NO. E011 OF 2021

WELDON KIPKIRUI TOO.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The Applicant, Weldon Kipkirui Too 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 8<sup>th</sup> November 2013 at Aonet village Mugango Location in Bomet County murdered Shephard Cheruiyot Chepkwony.
2. At the conclusion of the trial, Ong'udi J. who tried the case, convicted the Applicant with the offence of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code. Judgment was rendered on 15<sup>th</sup> March 2016.
3. Subsequently Muya J. sentenced the Applicant to serve 10 years imprisonment.
4. In his application dated 4<sup>th</sup> February 2021 filed under certificate of urgency, the Applicant asked this court to review his sentence and include the duration he had spent in remand as provided by Section 333 of the Criminal Procedure Code. In his supporting affidavit, he sought to be granted a non-custodial sentence.
5. The Application came up for hearing before me on 25<sup>th</sup> November 2021. The Applicant made oral submissions in which he submitted that he wished his sentence to be reduced by the pre-trial detention period and also that the court may exercise leniency and sentence him to probation. He prayed for forgiveness saying that he was now reformed.
6. In response to the Application, Mr. Murithi learned Prosecution Counsel submitted that the Applicant had been given a lenient sentence of 9 years imprisonment considering that the maximum sentence to which he was liable was life imprisonment.
7. The Applicant in response stated that he was only seeking leniency.
8. This court has no jurisdiction to review the sentence which was meted out by Muya J. a court of concurrent jurisdiction. The power to review the Applicant's sentence now lies in the court of appeal as it does not fall within the revisionary jurisdiction of this court as provided for under Section 362 and 364 of the Criminal Procedure Code Cap 75. (See **Ronald Kibet Rotich V. R, Bomet High Court Misc. Criminal Application No. E024 of 2021 [2021] eKLR**).
9. The Applicant told the court that he did not wish to appeal. Without prejudice to his right of appeal, and for his knowledge, seeing as it were that he is unrepresented, I perused the trial file and I observe that Muya J. did take into consideration the period that the Applicant was in custody. Before arriving at the 10 year sentence, the learned Judge stated:-  
  
***“The court has perused the mitigation by the Defence and observed that the Accused was treated as a first offender and that he has been in custody since the year 2013.....”***
10. It is therefore upon the Applicant to pursue his right of appeal for his application to be effectually considered. The Application is thus struck out.
11. Orders accordingly.

**RULING DELIVERED DATED AND SIGNED THIS 21ST 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)**