



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**MISCELLANEOUS APPLICATION NUMBER 120 OF 2019**

**LEAH WAIRIMU WANJIE.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. The applicant LEAH WAIRIMU WANJIE has filed Notice of Motion on 24/7/2019 seeking orders; -

***i. THAT, this Honorable court be pleased to grant orders for revision of the imposed sentence of 15 years' imprisonment in respect of HCCRC NO 16/2013 in the High Court Kenya at Nakuru based on mitigating factors of leniency.***

***ii. THAT, this application is supported by annexed affidavit of LEAH WAIRIMU WANJIE and upon such other grounds to be adduced during the hearing of this application.***

***iii. THAT, she wishes to attend the hearing of this application dated Nakuru on the 24<sup>th</sup> July 2019.***

2. It is supported by her affidavit filed on the same date where she depones;

***i. THAT she is the accused person in High Court at Nakuru Criminal case number 16 of 2013 charged with the offence of murder contrary to section 203 as read with sec 204 of the Penal Code and was sentenced for 15 years.***

***ii. THAT she is remorseful and contrite to the offence she committed deeply regret and sincerely apologize to the honorable court and the victim's family at large.***

***iii. THAT she has acquired vocational training and skills for the duration she have been in prison which will assist me once she is out of prison.***

***iv. THAT the factors despondent here above are true to the best of her knowledge and understanding.***

3. During the hearing of the application she submitted that she was pleading for leniency. Seeking a review of her sentence in view of the fact that her time in prison has led to her reformation, having reflected on her offence, that she realizes that she was an angry person and is now remorseful, seeking forgiveness from both the family, her children and the court.

She also submitted that she has health problems, pleaded with this court to convert her custodial sentence to a non-custodial sentence so that she could go home and take care of her children.

That she had acquired skills which she would use outside to sustain herself.

4. In her response to the applicant's submissions Ms. Wambui for state submitted that the applicant was charged with murder, was sentenced to 15 years' imprisonment. That the state considered that sentence to be lenient, but sufficient in the circumstances of the case.

That the applicant had come to the wrong forum seeking orders she could only obtain from the Court of Appeal.

5. I sought a social inquiry report from Probation and After Care services which was filed by Ms. Kongani dated 29<sup>th</sup> July 2020.

6. The applicant was sentenced on 20/9/2018 and has been in prison for about 2 years.

7. The review she seeks is provided for under **Article 50(20(q))** of the Constitution. However, it clearly states; - **by a higher court as prescribed by law.**

8. Is this application tenable in the circumstances?

9. In view of the Constitutional provisions this is the same court that found her guilty, convicted and sentenced her, hence the orders she seeks cannot emanate from it.

10. The appropriate forum for her is the next court.

11. Application dismissed.

**Delivered, dated and signed at Nakuru this 16<sup>th</sup> day of October 2020.**

**Mumbua T. Matheka**

**Judge**

**VIA ZOOM**

**In the presence of**

**Applicant: present**

**CA Edna**

**Ms. Wambui for state N/A**