



**EKC v Republic (Miscellaneous Criminal Application
E032 of 2021) [2025] KEHC 54 (KLR) (13 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 54 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
MISCELLANEOUS CRIMINAL APPLICATION E032 OF 2021**

**RL KORIR, J
JANUARY 13, 2025**

BETWEEN

EKC APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant was charged with the offence of incest contrary to section 20 (1) of the [Sexual Offences Act](#). He was convicted of the offence of incest on 6th November 2012 and was sentenced to serve life imprisonment.
2. The Applicant appealed against the conviction and sentence vide Kericho High Court Criminal Appeal Number 77 of 2012, [EKC v Republic](#). In a Judgement dated 19th November 2020 by Ongeru J., the court dismissed the Appeal and upheld the Applicant's conviction and sentence.
3. The Applicant applied for re-sentencing citing the Supreme Court's directions on sentencing in [Muruatetu & another v Republic; Katiba Institute & 5 others \(Amicus Curiae\)](#) (Petition 15 & 16 of 2015 (Consolidated)) [2017] KESC 2 (KLR) (14 December 2017) (Judgment).
4. The Applicant stated that the mandatory nature of his sentence was declared unconstitutional by the [Muruatetu](#) case (*Supra*)

The Applicant's submissions

5. In submissions filed on 20th December 2022, the Applicant submitted that this court should substitute his life sentence with a determinant one which would give him hope of reintegrating back into the society. He further submitted that he was remorseful and had reformed. That he has never had any indiscipline issue while in prison.



6. It was the Applicant's submission that he had been training and acquiring skills for personal development and had done several biblical courses such as Certificate of Bible League, Prisoner's Journey Certificate and Certificate in the prisoner's fellowship.
7. The Respondent filed their Grounds of Opposition dated 2nd August 2023 where they stated that this court was functus officio. They further stated that the Supreme Court contradistinguished the Muruatetu principles from all criminal matters except murder cases and held that mandatory minimum sentences were still legal.

Analysis and determination

8. As earlier stated in this Ruling, the Applicant having been charged with the offence of incest was convicted and sentenced by the trial court in Bomet. He appealed against the conviction and sentence in the High Court at Kericho and his appeal was dismissed.
9. As a general rule, the High Court can only review the Judgment of a subordinate court as provided for under sections 362 to 364 of the *Criminal Procedure Code*. This court therefore does not have the jurisdiction to review its own decision. In *John Kagunda Kariuki v Republic* (2019) eKLR, Ngugi J. (as he then was) held that:-

“In the present case, the Applicant's appeal has already been heard by the High Court. He cannot return to the High Court for a review of the sentence imposed. He is at liberty to make an argument for reduced sentence at the Court of Appeal”.

10. In the case of *Daniel Otieno Oracha v Republic* (2019)eKLR, the Petitioner had applied for review of a sentence imposed by a court of concurrent jurisdiction and Aburili J. held that:-

“The law abhors that practice of a judge sitting to review a judgment or decision of another judge of concurrent jurisdiction. Reduction of sentence could only be considered by the Court of Appeal or if this court was sitting on appeal of a judgment of the subordinate court or if the petitioner was seeking for resentence after exhausting appeal mechanisms and not otherwise.....

The judgment of Abida Ali-Aroni J made in accordance with the law has not been challenged. This court cannot sit on appeal of its own judgment or of court of concurrent competent jurisdiction when the Petitioner had an opportunity to ventilate his grievance before the Court of Appeal even if it was to challenge sentence alone.

Good governance demands that cases be handled procedurally in the right forum. This is because the rule of the thumb that superior courts cannot sit in review/appeal over decisions of their peers of equal and competent jurisdiction much less those courts higher than themselves and that matters falling under the exclusive jurisdiction of Supreme Court under Article 163(3) cannot be dealt with by the High Court.....”

11. I am further persuaded by Njuguna J. in *Lawrence Kariuki Njeru v Republic* (2021) eKLR, where she held that:-

“.....Further this court is bereft of jurisdiction to review the said judgment as doing so would be tantamount to sitting as an Appellate court on the judgment of the Learned Judge and which act the law abhors.



The petitioner ought to ventilate the issue on the resentencing and/or excessive sentence at the Court of Appeal.....”

12. The High Court of Kericho which is a court of concurrent jurisdiction has already upheld the Applicant’s sentence. Any further recourse that the Applicant has in regards to his sentence lies in the Court of Appeal and not in this court.
13. In the end, I find that this court has no jurisdiction to review the Judgement of Onger J. dated November 19, 2020 and therefore the Application herein lacks merit and the same is dismissed.

Orders accordingly.

RULING DELIVERED, DATED AND SIGNED THIS 13TH DAY OF JANUARY, 2025.

R. LAGAT-KORIR

JUDGE

Ruling delivered in the presence of the Applicant acting in person, Mr. Augustine holding brief for Mr. Njeru for the State and Siele (Court Assistant)

