



Republic v Mukolwe (Criminal Miscellaneous Application E014 of 2024) [2025] KEHC 336 (KLR) (23 January 2025) (Ruling)

Neutral citation: [2025] KEHC 336 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL MISCELLANEOUS APPLICATION E014 OF 2024**

**SC CHIRCHIR, J
JANUARY 23, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

STEPHEN MWAMBUA MUKOLWE ACCUSED

RULING

1. The Applicant was charged and convicted of the Offence of Murder by this court (Otieno J) and sentenced to 20 years in prison.
2. He has approached this court, through the Notice of Motion dated 8/1/2024 premised on Section 333 (2) of the Criminal Procedure Code. He prays that court takes into consideration, the period he had spent in custody prior to conviction.
3. Section 333(2) of the Criminal Procedure Code provides as follows:- “Subject to the provisions of section 38 of the Penal Code (Cap. 63) every sentence shall be deemed to commence from, and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this Code.

Provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.”

4. It is the Applicant’s case that there was no compliance with the above section.
5. The revision Jurisdiction of this Court as set out under Article 165(6) and (7) and sections 362 to 364 is in respect of the Lower Courts decisions only, not the superior courts, which include the high court. Indeed Article 165 (6) goes ahead to expressly bar the High Court from exercising any supervisory powers over the said superior Courts.



6. The sentence that the Applicant seeks to be revisited was passed by the high court and in the words of the above stated Articles of the constitution and the Criminal Procedure Code this court has no jurisdiction to entertain this Application for .
7. Further under the doctrine of functus officio this court has exhausted its mandate. If the Applicant was dissatisfied with the sentence , his recourse lies with the court of Appeal and not this court.
8. In any event, I have noted that it is apparent that the Judge was alive to the provisions of Section 333 (2) of the Criminal Procedure Code when he expressly stated that the sentence should run from the date of conviction.
9. Nevertheless, this court has no Jurisdiction to entertain this Application, as aforesaid and the Application is hereby struck off.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 23RD DAY OF JANUARY, 2025.

S. CHIRCHIR

JUDGE.

