



**Amugune v Republic (Miscellaneous Application E374 of 2023)
[2025] KEHC 1285 (KLR) (Crim) (14 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1285 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
MISCELLANEOUS APPLICATION E374 OF 2023
CJ KENDAGOR, J
FEBRUARY 14, 2025**

BETWEEN

AGGREY MANG'ONG'O AMUGUNE APPLICANT

AND

REPUBLIC RESPONDENT

(Arising from decisions in Court of Appeal Criminal Appeal 123 of 2019, Nairobi High Court Criminal Case No. 21 of 2013 and Nairobi High Court Misc. Application No. E015 of 2021)

RULING

1. The Applicant has submitted an application for resentencing, supported by an affidavit sworn by them. Originally filed in Machakos, the High Court at Machakos transferred the Misc. file to Nairobi.
2. The Applicant was charged, convicted and sentenced to death in Nairobi High Court Criminal Case No. 21 of 2013 for the offence of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#).
3. He informed the Court in his application that he had previously applied for resentencing in *Nairobi High Court Misc. Application E015 of 2021*.
4. On reading the decision in *Nairobi HC Misc. E015 of 2021*, I established that prior to the stated Misc application, he had lodged an appeal at the *Court of Appeal - Criminal Appeal 123 of 2019*. The Court of Appeal held as follows regarding the sentence;

“Notwithstanding that we were not requested to review the sentence, we note that in its ruling, the trial court observed that the appellant specifically instructed his counsel not to mitigate on his behalf, and he did not himself mitigate. This was despite the brutal



and callous murder of the two deceased brother and sister. In view of the appellant's unwillingness to mitigate and the clear absence of remorse, and taking into account the factors and circumstances of the case, we find that a review of the sentence of death to be unnecessary."

5. The decision in *High Court Misc. E015 of 2021* was as follows;

".....this court lacks the jurisdiction to relook into the issue of the sentence that was meted against the Applicant when the Court of Appeal has pronounced itself of the issue. The Court of Appeal, being a court superior to the High Court, cannot have its decision subjected to review by an inferior court."

6. The High Court has previously addressed the issue of resentencing. The Applicant was clearly informed that his re-sentencing application is not eligible for consideration at the High Court. His current application in Machakos constitutes an abuse of the Court process, as it seeks to revisit re-sentencing that has already been decided. Notably, he failed to disclose that he had previously lodged an appeal at the Court of Appeal, which thoroughly considered the sentencing matter.

7. The Applicant is directed not to file any other applications at the High Court concerning this matter unless leave is granted by the Court or there are specific directions/orders from the Court of Appeal related to this matter.

8. The application is dismissed.

It is so ordered.

DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 14TH DAY OF FEBRUARY, 2025.

.....
C. KENDAGOR

JUDGE

In the presence of:

Court Assistant- Beryl

Applicant present

Mr. Omondi, ODPP - present

