



REPUBLIC OF KENYA



**Kiano v Republic (Miscellaneous Criminal Application E037 of 2024)  
[2025] KEHC 3231 (KLR) (13 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 3231 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA  
MISCELLANEOUS CRIMINAL APPLICATION E037 OF 2024  
JN ONYIEGO, J  
FEBRUARY 13, 2025**

**BETWEEN**

**RAMADHAN ADEN KIANO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Ramadhan Aden Kiano, the applicant herein, was charged with the offence of murder contrary to section 203 as read with section 204 of the [Penal Code](#). The particulars were that on 21.03.2018 at Adhele within Madogo Location of Tana River County, he murdered Ramadhan Osman.
2. He thereafter entered a plea bargaining agreement with the state culminating to the reduction of the charge of murder to a lesser charge of manslaughter. He thus pleaded guilty to the charge of manslaughter and was consequently convicted and sentenced to 20 years' imprisonment before Hon. Aroni J.
3. The applicant previously approached this court under a certificate of urgency through his notice of motion filed before this court on 29.05.2024 seeking the following orders.
  - i. An order to grant him leave to file his appeal out of time.
  - ii. That the appeal has a high chance of success.
4. The said application was supported by an affidavit sworn by the applicant stating that he was convicted of the offence of manslaughter and thereafter sentenced to 20 years' imprisonment. That soon after his conviction, his family promised to hire a lawyer for him but the same has been difficult given his financial constraints. He however abandoned the same.
5. He has once more moved this court via an undated notice of motion seeking for orders that:



- i. Spent.
  - ii. The Honourable Court grant him a mitigation hearing.
6. The application is supported by a supporting affidavit sworn by the applicant in which he deposed that he was previously charged of the offence of murder. That he pleaded guilty to the lesser charge of manslaughter after successfully entering into a plea bargaining agreement and was sentenced to 20 years imprisonment. He urged that he has been in prison since the day of his arrest being March, 2018 and has since undergone rehabilitative programs. He also contended that at the time of sentencing, he was not afforded an opportunity to mitigate thus he prayed that this court be pleased to review the previous sentence and mete out a lenient sentence.
  7. I have considered the application herein and the oral submissions by the parties herein. The main issue for determination is whether this Honourable Court has jurisdiction to determine the application herein and to issue the orders sought.
  8. It is not in dispute that having been charged with the offence of murder, the applicant was successful in the plea bargaining entered with the state which led to the applicant plead to a lesser offence. Clearly, he is aggrieved by the sentence meted out by the court. In the application herein, the applicant now seeks a more lenient sentence arguing that prior to the conviction and sentence, he was not offered an opportunity to mitigate.
  9. In *John Kamau Gachuba v Republic* [2019] eKLR the Court held as follows;

“... The applicant merely seeks the imposition of a more lenient sentence. This court has no revision jurisdiction over an appeal it has concluded. The applicant’s only option is to appeal in the Court of Appeal...”
  10. In my view, the only remedy available to the applicant lies elsewhere as this court does not have jurisdiction to determine the issues raised in the application. Clearly, the applicant is aggrieved by the fact that despite entering a successful plea bargaining agreement, according to him, he was still sentenced to a stiff sentence. It is trite that this court and the court that meted out the alleged stiff sentence are courts of equal status and therefore, it is outright that if the applicant is not pleased by the finding by Aroni J (as she then was), then he is at liberty to appeal against the said determination and not to move this court in the manner herein.
  11. In my view, this court at this stage is functus officio and as a consequence, the application herein is dismissed for being unmeritorious.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 13<sup>TH</sup> DAY OF FEBRUARY 2025**

**J. N. ONYIEGO**

**JUDGE**

