



REPUBLIC OF KENYA



KENYA LAW
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**Mboto v Republic (Criminal Revision E001 of 2025)
[2025] KEHC 5850 (KLR) (24 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5850 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
CRIMINAL REVISION E001 OF 2025**

RL KORIR, J

APRIL 24, 2025

BETWEEN

SAMSON MUTHINI MBOTO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant (then Accused) Samson Muthini Boto was charged with the offence of Murder Contrary to Section 202 as read with Section 203 of the *Penal Code*. He was alleged to have murdered Silvester Kirambia Iceria on 17th May, 2022 at Gakoromoni village, Tharaka North Sub-County within Tharaka Nithi County.
2. During the pendency of the trial the Applicant entered into a plea agreement with the State which led to a reduction of his charge from murder to that of manslaughter. The information dated 19th October 2022, contained the substituted charge to which the Applicant pleaded guilty.
3. Proceedings before Gitari J on 19th October, 2022 show that the court painstakingly explained to the Applicant his trial rights under the law and the Applicant confirmed that he understood his trial rights and had entered the plea agreement voluntarily. That he also understood that the court would exercise its discretion in sentencing.
4. In the Judgement issued on 19th October, 2022, Gitari J. sentenced the Applicant to 10 years' imprisonment.
5. The Applicant has now approached this court for a sentence review. He has cited Article 165(3) and 7 of *the Constitution* and asked this court to review his sentence in accordance with the powers granted under Article 165(3) (a) and 7 of *the Constitution*.



6. The Application is supported by his supporting affidavit in which he restates the grounds on the face of the Application adding that he does not intend to appeal to the Court of Appeal.
7. At the hearing of the Application on 3rd March, 2025, the Applicant asked the court to look at the time he spent at the police station and also prayed for a non-custodial sentence stating further that his children were suffering.
8. Ms Rukungu learned Prosecution Counsel stated that she had filed submissions which she urged the court to consider.
9. In the submissions dated 24th March 2025, the Respondent urged that the sentence was legal, just and fair. That the learned Judge considered all the relevant factors and arrived at a proper sentence in the circumstances. Counsel further urged that the 10-year sentence was a departure from the maximum death sentence for murder prescribed under Section 204 of Penal Code and that the Applicant had failed to justify the reliefs sought.

Analysis and Determination

10. I have already set out the background to this Application. It is clear that the Applicant was convicted and sentenced by this court, differently constituted. As has been stated before, this court lacks jurisdiction to review the judgment or orders of a Judge of equal jurisdiction. The Applicant was sentenced by the High Court. He cannot return to the same court but he can only move up to the Court of Appeal. Ngugi J (as he then was) put this position aptly in the case of John Kagunda Kariuki Vs. Republic (2019)eKLR thus:-

“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 before the court of appeal.”

11. In this case however, and for the comfort of the Applicant, I have keenly perused the trial record and Judgement. In sentencing the Applicant, Gitari J stated:-

“Having considered all the circumstances of the case, I sentence the accused to serve 10 years imprisonment. The sentence to run from 8th June, 2022, the date he was remanded in custody to await trial.” (Underline mine)

12. It is my conclusion that, even if this court had the jurisdiction to review the sentence, there was nothing to review. The trial court had clearly included the period spent in pre-trial custody.
13. In the end, Application lacks merit and is dismissed.

Orders accordingly.

RULING DELIVERED, DATED AND SIGNED AT CHUKA THIS 24TH DAY OF APRIL , 2025.

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R. LAGAT - KORIR

JUDGE

Ruling delivered in the presence of Applicant acting in person, Ms Rukunga for the Republic. Muriuki Court Assistant.

