



**Elema v Republic (Criminal Miscellaneous Application E002 of 2024)  
[2025] KEHC 5911 (KLR) (Crim) (12 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5911 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ISIOLO  
CRIMINAL  
CRIMINAL MISCELLANEOUS APPLICATION E002 OF 2024  
SC CHIRCHIR, J  
MAY 12, 2025**

**BETWEEN**

**ALI SORA ELEMA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Through the Notice of Motion dated 30/7/2024, the Applicant herein seeks for re-sentencing with a view to reducing the sentence of 35 years which he is currently serving, to 10 years. The motion is supported by his Affidavit sworn on even date.
2. He states that he was convicted by the trial court for the offence of trafficking in Narcotics and sentenced to 35 years in prison. His appeal to the High Court vide Meru High court Criminal Appeal No. E005/2023 on both conviction and sentence was dismissed.
3. He has now approached this court for what he calls re-sentencing.
4. The Respondent is in support of the Application. It concedes that the trial court failed to consider the option of a fine, and the sentence was too excessive.

Determination

5. The Motion is premised on Article 50 (1) of the Constitution and Section 329 of the Criminal Procedure Code. Article 50(1) of the Constitution grant every person the right to have a fair public hearing, while Section 329 of the Criminal Procedure Code mandates the court to receive such information or evidence that may help in the determination of an appropriate sentence. That is to say apart from the submissions by an Accused person and the prosecution, social inquiry reports may be received from the probation office and submissions by the victims of the crime.



6. The Applicant herein was charged with the offence of trafficking in Narcotics Drugs contrary to Section 4 (a) of the *Narcotic Drugs and Psychotropic Substance Control Act* (No. 4 of 1994).
7. I have considered the Application and submissions of the parties. Firstly, there is no law providing for re-sentencing under the Kenyan law. What the law allows is a review of sentence as set out under Sections 362 to 367 of the *Criminal Procedure Code*. Under Sections 362-367, the High court is given the mandate to review any order, proceedings or sentence made or passed by a subordinate court with a review to ascertaining the legality correctness or propriety of such order, sentence or proceedings.
8. The only “re-sentencing” that the courts have undertaken is pursuant to the directions of supreme court in *Muruatetu & another v Republic; Katiba Institute & 4 others (Amicus Curiae)* [2021] KESC 31 (KLR). However the directions on resentencing by the court were only in respect to those persons who had been convicted of the offence of murder under section 204 of the *Penal Code*.
9. Thus, there is no basis upon which this court can re-sentence the Applicant.
10. I have taken note of the fact that the Applicant is not represented and may have been intended to apply for review and not resentencing. However even if I was to read the plea of re-sentencing as one of “revision” this court has no jurisdiction to review the Applicant’s sentence.
11. The revision powers given to the high court under Section 364 is in respect of acts done by the subordinate courts only. The Applicant herein had been heard by the High Court in Meru on Appeal. The High Court confirmed both the conviction and sentence as passed by the trial court. Thus, the sentence which I am apparently being asked to review was affirmed by the High Court. This court does not have the powers to a revise orders or decisions of a superior court.
12. Indeed, Article 165 (6) expressly bars the High Court from supervision of Superior Courts which include the High Court. Article 165 (6) provides as follows: “The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a financial or quasi-Judicial function but not over a superior court”.
13. Further, there are no powers given to a Judge to review orders or decision of a Judge with concurrent jurisdiction. In effect the high court has become functus officio in this matter.
14. If the Applicant was dissatisfied with the decision of Justice L.W Gitaru delivered on 1/7/2024 his recourse was to move to the court of Appeal. This “return journey” to the high court is ill- advised.
15. The application is without any merit. It is hereby dismissed.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT ISIOLO THIS 12TH DAY OF MAY 2025.**

**S. CHIRCHIR**

**JUDGE.**

