



**Kuria v Republic (Miscellaneous Criminal Application
E078 of 2024) [2025] KEHC 5835 (KLR) (8 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5835 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
MISCELLANEOUS CRIMINAL APPLICATION E078 OF 2024**

FN MUCHEMI, J

MAY 8, 2025

BETWEEN

BONIFACE KARANJA KURIA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Brief Facts

1. The application for determination dated 19th September 2024 seeks for orders of review of sentence.
2. The applicant was convicted by Thika Chief Magistrate in Criminal Case No 826 of 2010 with the offence of manslaughter contrary to Section 202 as read with Section 205 of the *Penal Code* and was sentenced to life imprisonment. The applicant appealed against the sentence in High Court, Nairobi Criminal Appeal No 126 of 2010 which appeal was dismissed on 12th February 2013. The applicant then appealed to the Court of Appeal in Nairobi being Criminal Appeal No 107 of 2012 and the same was also dismissed on 28th February 2014 for lack of merit.
3. The applicant states that he is currently serving a life sentence and urges the court to find that the life sentence is harsh, inhumane and unconstitutional as it contravenes the sentencing purpose which is to reform and reintegrate.
4. The respondent filed grounds of opposition dated 22nd January 2025 and argues that the instant court became functus officio and has no jurisdiction to resentence since a court of concurrent or similar jurisdiction, that is, the Milimani High Court vide Appeal No 126 of 2010 upheld the sentence of the trial court which judgement was confirmed by the Court of Appeal in Criminal Appeal No 107 of 2012. The respondent further argues that asking the current court to resentence is equivalent to asking the court to sit as an appellate court against its own judgment and determine whether the appeal has chances of success.



5. The respondent states that the issue of sentence has been dealt with conclusively to the effect that the appeal on conviction and sentence had no merit both in the High Court and Court of Appeal. The respondent further states that the applicant is just testing the waters and trying his luck and forum shopping which actions should be discouraged to deter other potential applicants with similar applications.
6. Parties put in written submissions.

The Applicant's Submissions.

7. The applicant submits that he initially filed an application being Miscellaneous Criminal Application No E011 of 2020 which was heard and dismissed on 8th July 2021. In view of the emerging jurisprudence on the issue of the mandatory death penalty, the applicant seeks the instant court to review his sentence in line with the case of Ernest Asami Bwire Abonga v Republic Miscellaneous Criminal Application No 420 of 2018.

The Respondent's Submissions.

8. The respondent reiterates the contents of her affidavit and submits that the instant application is an abuse of the court process and ought to be dismissed.

The Law

9. This court is empowered by Article 165(6) of the *Constitution* of Kenya to review a decision by a subordinate court. Article 165(6) provides:-

The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.

10. The applicant has come to this Honourable court by way of review provided for under Article 50 of the *Constitution*. It provides:-

(2) Every accused person has the right to a fair trial, which includes the right:-

(q) If convicted, to appeal to, or apply for review by a higher court as prescribed by law.

11. In the case of *Samuel Kamau Macharia v KCB & 2 others*, Civil Application No 2 of 2011, it was stated:-

“A court’s jurisdiction flows from either the *Constitution* or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by the *Constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.”

12. The applicant herein was convicted on his own plea of guilty on a charge of manslaughter contrary to Section 204 as read with Section 205 of the *Penal Code* in the Chief Magistrate’s Court Thika in Criminal Case No 826 of 2010. The applicant was sentenced to life imprisonment and being aggrieved by the sentence appealed to the High Court in Nairobi being Criminal Appeal No 37 of 2006. The court heard the appeal and dismissed the same on 19th February 2008. The applicant then appealed to the Court of Appeal in Nairobi being Criminal Appeal No 107 of 2012 and the same was dismissed on 28th February 2014.



13. What then does the law provide in regard to review of sentences or orders in a criminal case? Article 50(2)(q) of the Constitution is of relevance as discussed above. It provides that review shall be applied for in a higher court other than the one that sentenced the applicant.
14. It therefore follows that this Honourable court cannot review a decision of the Court of Appeal and reduce the sentence to a lesser one as requested by the applicant. Review can only be done by a court of higher jurisdiction. It is also important to point out that the applicant having filed an appeal and second appeal in the Court of Appeal is not entitled to review under Article 50 (2) of the Constitution.
15. Upon considering the law and the facts of this application, I find this application a non-starter in that this court is not possessed of the requisite jurisdiction to review the orders of the Court of Appeal in respect of sentence.
16. This application is hereby struck out with no orders as to costs for being incompetent.
17. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 8TH DAY OF MAY 2025.

F. MUCHEMI

JUDGE

