



**Muhina v ODPP Voi (Miscellaneous Criminal Application  
E025 of 2024) [2025] KEHC 6128 (KLR) (16 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6128 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
MISCELLANEOUS CRIMINAL APPLICATION E025 OF 2024**

**AN ONGERI, J**

**MAY 16, 2025**

**BETWEEN**

**THOMAS MUHINA ..... APPLICANT**

**AND**

**ODPP VOI ..... RESPONDENT**

**RULING**

1. The applicant in this case, Thomas Muhina was charged in Taveta Cr. Case no. 598 of 2013 with the offence of robbery c/s 296(2) of the [Penal Code](#) and he was sentenced to death by the trial court.
2. The applicant filed HCRA No. 151 of 2014 to this court and the said appeal was dismissed.
3. The applicant's sentence was commuted to life imprisonment by his excellency the President.
4. The applicant has filed this application seeking his sentence of life imprisonment reviewed to 11 years.
5. I have considered the submissions filed by both parties. The applicant has submitted that this court is clothed with the legitimate jurisdiction and discretion to grant his request.
6. The respondent opposed the application and stated in their submission that the applicant's appeal to this court was dismissed in 2024 and this court cannot review the decision of a fellow colleague of equal status.
7. I find that this court has no jurisdiction to review the decision rendered when the applicant's appeal was dismissed.
8. The current legal position in Kenya regarding the review of a sentence imposed by a court of equal jurisdiction, particularly where an appeal has already been dismissed, is well-settled.
9. The High Court lacks jurisdiction to review or set aside the decision of another High Court judge of concurrent jurisdiction.



10. This principle is rooted in the doctrine of stare decisis and the hierarchy of courts, which ensures consistency and finality in judicial decisions.
11. In the case of *Joseph Nduvi Mbuvi v Republic* [2019] eKLR, the Court of Appeal reaffirmed that a judge of the High Court cannot sit on appeal or review the decision of another judge of the same court. The court emphasized that such a practice would undermine judicial comity and create uncertainty in the administration of justice.
12. Similarly, in *Republic v Karisa Chengo & 2 others* [2017] eKLR, the Supreme Court of Kenya held that the High Court cannot revisit or alter a sentence imposed by another judge of the same court unless the decision is appealed to a higher court or reviewed under specific statutory provisions.
13. The applicant's request for a sentence review from life imprisonment to 11 years cannot be entertained by the High Court, as it would amount to sitting on appeal over a decision of a judge of equal standing.
14. The proper avenue for such a challenge would be an appeal to the Court of Appeal, as provided under Article 164(3) of the *Constitution* of Kenya, 2010.
15. The respondent's opposition to the application is therefore legally sound, as the High Court is functus officio once it has rendered its decision on appeal.
16. Furthermore, the commutation of the death sentence to life imprisonment by the President under the *Power of Mercy Act* does not reopen the case for judicial review of the sentence by the High Court.
17. The Court of Appeal in the case of *Julius Kitsao Manyeso v Republic* [2021] eKLR clarified that the President's exercise of the prerogative of mercy is an executive function distinct from judicial sentencing, and it does not confer jurisdiction on the High Court to revisit the sentence.
18. In conclusion, the legal position in Kenya is clear: That the High Court cannot review or alter a sentence imposed or upheld by another judge of the same court after an appeal has been dismissed.
19. The applicant's remedy lies in appealing to the Court of Appeal or seeking other lawful avenues, such as a petition for resentencing under the relevant provisions of the law, if applicable. This Ruling correctly reflects this settled jurisprudence.
20. The applicants only option was to prefer a second appeal to the Court of Appeal.
21. I dismiss the application for review of the sentence of life imprisonment as the same is lawful and meted commensurate to the gravity of the charges.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT VOI HIGH COURT THIS 16TH DAY OF MAY, 2025.**

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**A. N. ONGERI**

**JUDGE**

In the presence of:

Court Assistants: Maina/Millicent

..... for the Applicant

..... for the Respondent

