



**Murunja v Republic (Criminal Miscellaneous Application
E020 of 2025) [2025] KEHC 5785 (KLR) (8 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5785 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
CRIMINAL MISCELLANEOUS APPLICATION E020 OF 2025**

RL KORIR, J

MAY 8, 2025

BETWEEN

ANDREW MUTIRIA MURUNJA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant Andrew Mutiria Murunja is serving a sentence of 7 years imprisonment for the offence of manslaughter Contrary to Section 202 as read with Section 205 of the [Penal Code](#). He was initially charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the [Penal Code](#). According to the information dated 27th January 2022, he unlawfully murdered George Kamakia Muruja whom the proceedings later disclosed was his brother.
2. The Applicant entered plea negotiations with the State leading to a Plea Agreement which was accepted by the court (Gitari J) after satisfying herself that the Applicant understood the plea negotiations, his trial rights under the law, and; most importantly that he understood that sentencing was at the sole discretion of the court.
3. The Applicant pleaded guilty to the reduced charge of manslaughter and after his mitigation was sentenced to serve 7 years imprisonment. He has now approached this court seeking a review of his sentence.
4. In the undated Application received in this court, the Applicant states that he was in custody for 3 ½ months before his conviction and sentence. That the Honourable court did not take that period into consideration and if he served the 7 years, then he would have served an excessive sentence. He urged that the period he was in pre-trial custody be taken into consideration and his 7 year sentence be reviewed accordingly.



5. When the Application came up for hearing on 24th March, 2025, Ms Rukunga learned prosecution counsel submitted that the Application was brought under Section 333 of the [Criminal Procedure Code](#). She submitted that she had perused the trial file and noted that Section 333 was not taken into consideration and on that ground conceded the Application.
6. On his part, the Applicant urged the court to consider his Application and prayed for a non- custodial sentence.

Analysis and Determination

This is an Application seeking revision of sentence. This court's revisionary jurisdiction is donated by Section 362-364 of the [Criminal Procedure Code](#).

Section 362 provides:-

“362. The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.”

7. From the above Section of the Law, it is clear that this court can only review a sentence passed by a subordinate court and not a superior court. The sentence in this case was passed by a court of equal and concurrent jurisdiction. Indeed it was passed by the same court, only differently constituted.
8. In the case of Daniel Otieno Oracha vs Republic (2019) eKLR, the Petitioner had applied for review of a sentence imposed by a court of concurrent jurisdiction and Aburili J. held that:-

“The law abhors that practice of a Judge sitting to review a judgement or decision of another Judge of concurrent jurisdiction. Reduction of sentence could only be considered by the Court of Appeal or if this court was sitting on appeal of a Judgment of the subordinate court or if the Petitioner was seeking for resentence after exhausting appeal mechanisms and not otherwise....

The Judgment of Abida Ali-Aroni J made in accordance with the law has not been challenged. This court cannot sit on appeal of its own Judgement or of court of concurrent competent jurisdiction when the Petitioner had an opportunity to ventilate his grievance before the Court of Appeal even if it was to challenge sentence alone.

Good governance demands that cases be handled procedurally in the right forum. This is because the rule of the thumb that superior courts cannot sit in review appeal over decisions of their peers of equal and competent jurisdiction much less those courts higher than themselves and that matter falling under the exclusive jurisdiction of Supreme Court under Article 163(3) cannot be dealt with by the High court.....”

9. I am further persuaded by Njuguna J in Lawrence Kariuki Njeru vs. Republic (2021) eKLR, where she held that:-

“.....Further this court is bereft of jurisdiction to review the said Judgement as doing so would be tantamount to sitting as an Appellant court on the Judgment of Learned Judge and which act the law abhors.



The Petitioner ought to ventilate the issue on the resentencing and/or excessive sentence at the Court of Appeal.....”

10. I am persuaded by the case law above. I am further persuaded to decline the invitation disguised as an application under Section 333 of the Criminal Procedure Code or in any other way deal with the sentence meted out by a Judge of concurrent jurisdiction. That jurisdiction properly belongs to the Court of Appeal.
11. The Applicant was convicted and sentenced upon plea agreement. He did indicate to the court that he understood his trial rights and had plea bargained voluntarily. Section 137 F (h) of the Criminal Procedure Code provides with respect to an accused that :-
 - (h) that by entering into a plea agreement, he is waiving the right to appeal except as to the extent or legality of the sentence;
12. The legal position therefore is that the Applicant, having plea bargained was at liberty to appeal his sentence.
13. Section 137(1) (a) requires the trial court in passing sentence, to take into account the period during which the accused person has been in custody. I have, for the comfort of the Applicant looked at the trial record. It shows that the Applicant was arraigned in court on 2nd February, 2022 and was sentenced on 26th April, 2022. The court in sentencing him to 7 years was lenient considering that the law provides a maximum life sentence for the offence of manslaughter.
14. For the reasons above, to I find the Application bereft of merit. It is dismissed. The Applicant’s remedy lies on an appeal against his sentence to the Court of Appeal.

Orders accordingly.

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

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R. LAGAT - KORIR
JUDGE

