



**Lomerisya v Republic (Miscellaneous Criminal Application
E022 of 2024) [2025] KEHC 9780 (KLR) (3 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9780 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ITEN
MISCELLANEOUS CRIMINAL APPLICATION E022 OF 2024**

E OMINDE, J

JULY 3, 2025

BETWEEN

LORDETE LOMERISYA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The application for determination dated 24/10/2024 and seeks for orders for review of sentence.
2. The Applicant herein, together with others was charged in Iten Senior Principal Magistrate’s Court Criminal Case No.72 of 2017, with six counts of robbery with violence contrary to Section 296(2) of the *Penal Code*. The Applicant was found guilty on all six counts, convicted and was sentenced on all the six counts to 15 years for each count and the sentence was to run consecutively bringing the term to a total of 90 years’ imprisonment.
3. Dissatisfied with the sentence and conviction, the Applicant filed an appeal in the High Court of Kenya at Eldoret vide *Criminal Appeal No. 193 of 2019*, where the Court set aside the consecutive term and revised the term to run concurrently from the date of conviction bringing the sentence down to a term of 15 years’ imprisonment.
4. The Applicant has now filed the instant application citing Article 165(3) of the *Constitution* and is seeking a review of the sentence on rounds that the sentence is harsh, excessive in the circumstances. He prays that his sentence be substituted with a Probation Sentence or Community Service Order. Relying on Article 50(2)(p)(q) of the *Constitution*, the Applicant also prays that the Court awards him a lenient sentence. The Application was canvassed vide written submissions.
5. The Applicant did not file any submissions while the Respondent filed submissions dated 25/3/2025 on 1/4/2025.



The Respondent's Submission

6. Prosecution Counsel, Ms. Racheal Mwangi submitted that the instant application is improper, bad law and a waste of this Court's time. Counsel urged that this Court's lacks jurisdiction to hear and determine the application. Counsel maintained that once this Court pronounced on its judgment on appeal, it became functus officio. Counsel submitted that it is trite law that a Court cannot sit on review or appeal over the decision of Court of equal and competent jurisdiction.
7. Counsel relied on the case Lusaka *v Republic (Criminal Appeal (Application) 3 of 2019)* [2023] KECA 1071 (KLR) where the Court observed that:

The applicant was heard by the High Court and, on appeal, by this Court. He had the opportunity to ask, under section 333(2) of the *Criminal Procedure Code*, for the period he says he was in remand custody pending trial to be considered in sentencing. He did not raise the issue in either Court. There is no claim that the sentence that was meted out for the offence was illegal. In these circumstances, we find that the justice of the matter demands that we do not disturb the sentence that was rendered by this Court on July 25, 2019. This is because we are functus officio, and lack the jurisdiction to review the sentence.
8. Counsel maintained that the only occasion when the Court can review its judgment is when it is required to correct any errors of clerical or arithmetic nature in the judgment which has arisen from accidental slip or omission or where there are errors of law that have occasioned a miscarriage of justice. Counsel relied on the case of *Benjoh Amalgamated Limited & another v Kenya Commercial Bank Limited* [2014] eKLR.
9. Counsel urged that allowing the Applicant's Application will amount to this Court reviewing its own decision, yet the Applicant has not demonstrated that the judgment in High Court Criminal Appeal No. 193 of 2019 needed correction of errors of law which have occasioned great injustice to the sentence he is now serving. Counsel maintained that the only recourse available to the Applicant is filing an appeal to the Court of Appeal as this Courts lacks jurisdiction to hear and determine the application

Determination

10. The only issue for determination is whether the prayer for resentencing can be granted.
11. As per the provisions of Article 165 of the *Constitution* of Kenya 2010 the court does have the requisite jurisdiction to handle this Application for review. It provides as follows;
 - (3) Subject to clause (5), the High Court shall have—
 - (a) unlimited original jurisdiction in criminal and civil matters;
 - (b) jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened;
 - (e) any other jurisdiction, original or appellate, conferred on it by legislation.
 - (6) 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.



- (7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.
12. The High Court vide its Judgment delivered on 28/05/2020 by Hon Lady Justice H.A. Omondi (as she then was) rendered itself in regard to the Applicant's sentence. In this regard, this court having heard the Applicant's appeal on sentence and rendered itself on the same, it became functus officio as regards the issue of any subsequent review of the Applicants sentence.
13. The judgment of the High Court by the Hon Lady Justice H. Omondi is by a Court that is of equal, similar, competent and concurrent jurisdiction as this Court and if not satisfied with the same, the only recourse available to the Applicant is an appeal to the Court of Appeal. For these reasons, I am of the finding that the Application is misconceived and lacks merit. The same is accordingly dismissed in its entirety. Right of Appeal 14 days.

READ DATED AND SIGNED AT ELDORET ON 3RD JULY 2025

E. OMINDE

JUDGE

