



**Opicho v Republic (Criminal Revision E126 of 2023)
[2025] KEHC 10514 (KLR) (17 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10514 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CRIMINAL REVISION E126 OF 2023**

RC RUTTO, J

JULY 17, 2025

BETWEEN

EVERLYNE MARTHA OPICHO APPELLANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant herein was on 28th October 2020 convicted and on 21st January 2021 sentenced to 27 years imprisonment for the offence of murder contrary to section 203 as read together with section 204 of the *Penal Code*. The applicant now seeks that this court revises the sentence by converting the remaining part of sentence into a non-custodial sentence.
2. The applicant states that she has been in prison since 2016 to-date and has undergone counselling, rehabilitation and has reformed. She further states that she is remorseful for having committed the offence which according to her was driven by anger, resentment and immense stress.
3. She states that this court has the jurisdiction to review the sentence and urges the court to invoke section 4(b) of the *Probation of Offenders Act*, Section 3 of the *Community Service Act*, as well as the *United Nations Minimum Rules for Non Custodial Measures* (The Tokyo Rules). She contends that upon her release she will share with young mothers on how to be resilient, and the skills gained.
4. By way of submissions dated 17th April 2025, the respondent opposed this application. They stated that the court is functus officio and cannot sit to review the orders made by a court of concurrent jurisdiction. Further that the applicant is not deserving of any leniency. Counsel urged the court to consider that the offence of murder attracts a death sentence but in this instance the court considered the mitigating legal and factual realities as well as the time spent in custody in giving the 27 years imprisonment. They urged the court to dismiss the application.



5. I have considered the Applicant's application, the supporting affidavit, as well as the parties' submissions. The Applicant is seeking to have a review of the sentence meted upon him on grounds that she has been custody since when she was arrested and that she has been rehabilitated and reformed.
6. This Court observes that the Applicant conviction and sentence was rendered by the High Court which holds a concurrent jurisdiction while exercising its jurisdiction as a court of original jurisdiction. Where a party is aggrieved by a decision rendered by this Court in the exercise of its original jurisdiction, the appropriate recourse lies in filing an appeal before the Court of Appeal."
7. I wish to draw reference from the case of *Daniel Otieno Oracha v Republic* [2019] KEHC6242 (KLR) where the court in a similar situation held as follows;

“13. This court and the High Court at Kisumu are courts of concurrent jurisdiction. That being the case, this court is devoid of any jurisdiction in the exercise of its judicial authority under Article 159 of the *Constitution*, to review a judgment of a court of concurrent jurisdiction. To do so would be tantamount to sitting as an Appellate court on the judgment of my sister Judge Hon. Abida Ali - Aroni, J.

14. The law abhors that practice of a judge sitting to review a judgment 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.

15. This court's jurisdiction is derived from various statutes and Article 165 of the Constitution. In *Samuel Kamau Macharia & Another v KCB & 2 Others* App. No. 2/2011, the Supreme Court of Kenya made it clear that a court cannot arrogate itself jurisdiction exceeding that which is conferred upon it by law, and that a court cannot expand its jurisdiction through judicial craft.

16. 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 judgment 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.”

8. Accordingly, this Court lacks the jurisdiction to review a matter already adjudicated by a court of concurrent jurisdiction.
9. Secondly and in the alternative, the matters raised in this application could be raised in a Petition to the president under Article 133 of the *Constitution* as well as under the *Power of Mercy Act*. (See the case of *Sianyoo Atembe v Republic* (Criminal Revision 194 of 2023) (2023) KEHC 26456 (KLR) 5th December 2023 Ruling).
10. In view of the above this Court has not powers to interfere with a decision rendered by a court of concurrent jurisdiction. It can only interfere with sentence of a subordinate court on appeal or revision.
11. The application is therefore dismissed.

DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 17TH DAY OF JULY, 2025

RHODA RUTTO



JUDGE

In the presence of;

.....Appellant

.....Respondent

