



**Mataguda v Director Public Prosecution (Criminal Revision  
E156 of 2023) [2024] KEHC 190 (KLR) (19 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 190 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
CRIMINAL REVISION E156 OF 2023  
A. ONG'INJO, J  
JANUARY 19, 2024**

**BETWEEN**

**BARISA WAYU MATAGUDA ..... APPLICANT**

**AND**

**DIRECTOR PUBLIC PROSECUTION ..... RESPONDENT**

**RULING**

1. By a letter dated August 28, 2023 the applicant seeks that this court urgently calls and examines the record of the proceedings of the trial court in its entirety and be pleased to make a finding that the sentence adduced was indeed very harsh and ought to be substituted with an order for non-custodial sentence.
2. The applicant in his letter above has indicated that his family and the deceased's family had a meeting of reconciliation on June 5, 2020 and are now living in harmony and the chief of Kinakomba has written a letter dated July 2, 2021 to that effect. The Applicant has also indicated that he has been suffering from spine problem as per letter from Coast General Hospital. A notice of motion application filed on same date, a letter dated August 28, 2023 i.e. on September 13, 2023 also seeks review of sentence.
3. The applicant was convicted in Mombasa HCCR Case No 6 of 2008 for the offence of murder and sentenced to serve 40 years jail term after the trial Judge considered his mitigation and said that –  

“murder is an extremely serious offence. As a result of the accused's action a human life has been lost and a family has been cast into mourning. The sentence must mirror the seriousness of the offence”.
4. The Applicant preferred an appeal to the Court of Appeal in CRA No 376 of 2012 and his appeal was dismissed in it's entirety. Conviction & Sentence by the trial Judge was confirmed. This court cannot



revise the orders of the trial court on any account neither can it revise the orders of the Court of Appeal being Superior Court.

5. In regard to application for re-sentencing the only thing this court can do is to order that the 40 years jail term starts running from the date the Applicant was arraigned in court pursuant to the mandatory provisions of section 333(2) of the *Criminal Procedure Code* as the offence he was charged with was not bailable as at February 28, 2008.

**DATED, SIGNED AND DELIVERED IN OPEN COURT/ONLINE THROUGH MS TEAMS,  
THIS 19<sup>TH</sup> DAY OF JANUARY 2024**

**HON. LADY JUSTICE A. ONG'INJO**

**JUDGE**

**In the presence of: -**

Etropia - Court Assistant

Mr. Ngiri for the Respondent

Applicant- Present in person

**HON. LADY JUSTICE A. ONG'INJO**

**JUDGE**

