



Republic v Kosgei (Petition E052 of 2021) [2024] KEHC 306 (KLR) (24 January 2024) (Ruling)

Neutral citation: [2024] KEHC 306 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
PETITION E052 OF 2021
RN NYAKUNDI, J
JANUARY 24, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

SHADRACK KIPTERBEI KOSGEI ACCUSED

RULING

1. The Petitioner was initially charged with the offence of murder contrary to Section 203 of the *Penal Code*. The particulars of the charge were that on the 19th day of November 2013 at Chepkemel village Chepsaita Location in the Eldoret West District within Uasin Gishu County, murdered Celestine Chepkosgei. Following a successive plea-bargaining agreement the offence was substituted hat of Manslaughter Contrary to Section 202 as read with Section 205 of the *Penal Code*. The trial court convicted the petitioner by imposing a 10 year custodial sentence.
2. In this latest application the petitioner has moved the court vide a Notice of Motion dated 20.5.2021 expressly brought under Section 362, 364(1) b and 365 of the *CPC* CAP 75 Laws of Kenya in Reliance to Article (1) 2(3), 19(4) 23(1) 25c, 50(2) 59(2) a & b 165(3) a, b & d (6) (7) and 258(1) of the *Constitution of Kenya* 2010.
3. I have considered the application by adopting the provisions of the criminal procedure code relied upon by the petitioner. In my considered view, there is no newly discovered evidence presented before this court for the verdict of ten years imprisonment to be reviewed. In addition, there is no substantial legal error which occurred at the trial or important questions which remain unresolved for the motion to be considered under Art. 50 (6) (a) & (b) of the *Constitution*. Motions for a new trial rest on newly compelling discovered evidence. That the evidence has come to the knowledge of the petitioner since the conviction and sentence. That it was not owing to the want of due diligence that it did not come sooner than the date of the Notice of Motion. It is also clear that the petitioner must meet the threshold that the material evidence so relied upon was meant to produce a different verdict for the interest of justice. All these pertinent principles have not been answered by the petitioner for this court to exercise



discretion to review the verdict on sentence. The formulation of the sentence by the session Judge did appreciate the provisions of section 333 (2) of the *Criminal Procedure Code*. The general rule is that this court must decide the question of sentence according to the facts in existence at the time when the sentence was imposed and not according to new circumstances which came into existence afterwards and, even if there are exceptions to this rule, this case does not appear to constitute such exception.

4. The petition is therefore dismissed for want of merit under Section 382 of the *Criminal Procedure Code*.

DATED SIGNED AND DELIVERED AT ELDORET THIS 24TH DAY OF JANUARY 2024

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R. NYAKUNDI

JUDGE

