



**Okiri v Republic (Miscellaneous Criminal Application 89 of 2023)
[2024] KEHC 1377 (KLR) (15 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1377 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
MISCELLANEOUS CRIMINAL APPLICATION 89 OF 2023
DO OGEMBO, J
FEBRUARY 15, 2024**

BETWEEN

NELSON OCHIENG OKIRI APPLICANT

AND

REPUBLIC RESPONDENT

(Being an Application for Sentence Review from Sentence in Siaya High Court Criminal Case No. E030 OF 2021 by Hon. Justice R.E. Aburili, J dated 7/11/2021)

RULING

1. Moses Ochieng Okiri, the Applicant has filed this Notice of Motion application dated 27/6/2023 before the court on 15/7/2023. He has brought the same under numerous provisions of the Constitution including Articles 22(1), 23(1), 24(1), 27(1), 40, 50 (2) (p), (q), 159 (2) and 165 (3) (5) of the Constitution and Sections 215, 216 and 354 of the Criminal Procedure Code and also Section 26 (2) of the Penal Code. The application seeks at prayer 2 thereof, that the Sentence of the Applicant be reviewed to a lesser term.
2. The application of the applicant is supported by his own Affidavit sworn on 2/6/2023 in which he depones that he was tried and convicted of the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code and sentenced to serve 15 years imprisonment. The applicant has gone ahead to depone on various factors of mitigation including that he spent 9 months in remand custody, that he is 55 years old and asthmatic and a bread winner of his family of 5 children and that he is remorseful.
3. The Prosecution has not made any submissions to the application of the Applicant.
4. I have considered this application of the Applicant. This application is basically for revision of the sentence meted out on the applicant. The first issue that crops out for determination in this application



therefore, is whether this court has the powers and jurisdiction to grant the orders sought by this application.

5. I have perused the record of proceedings of the trial court. The same reveal that the applicant was charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. After full trial, the applicant was convicted as charged and sentenced to serve 15 years imprisonment. This was on 7/11/2022.
6. The record clearly show that the Applicant had this to say in mitigation before his sentence.

“I thank God for giving me this opportunity. I send my condolences to the family of Ogosi and for giving me free bond which has enabled me to take care of children. I am 55 years now. I have never committed any offence and I have never been arrested since I was born. I am innocent. That is all.”

The advocate for the Applicant further made mitigation, that:

“I pray that this court considers the age of the accused and as he cares for children. He has conducted himself well since the commencement of the trial.”

7. The trial court duly went ahead to consider the mitigation of the Applicant and the circumstances of the case before proceeding to pass the sentence.
8. By this application, the applicant seeks that this court reconsiders his mitigation, which raises the same issues he raised before the trial Judge, and which the court considered in passing the sentence. Neither the *Constitution* of Kenya nor any written law give this court to review any orders or findings of a court of concurrent jurisdiction. Same would be tantamount to this court sitting on appeal or revision of its own judgment. It would be unconstitutional and illegal.
9. For this reason, I find no merit in the application of the Applicant filed herein and dated 27/6/2023. I dismiss the same wholly. It is so ordered.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 15TH DAY OF FEBRUARY, 2024

D.O. OGEMBO

JUDGE

15/2/2024

Ruling read out in presence of Applicant(Kisumu Maximum) and
Ms. Mumo for State.

D.O. OGEMBO

JUDGE

15/2/2024

Court:

Applicant to be treated.

D.O. OGEMBO

JUDGE

15/2/2024

