



**Kibwaro v Respondent (Miscellaneous Criminal Application
E010 of 2021) [2024] KEHC 2171 (KLR) (5 March 2024) (Judgment)**

Neutral citation: [2024] KEHC 2171 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KILGORIS
MISCELLANEOUS CRIMINAL APPLICATION E010 OF 2021**

F GIKONYO, J

MARCH 5, 2024

BETWEEN

ERICK KIBWARO APPLICANT

AND

RESPONDENT RESPONDENT

*(Revision from Original Conviction and Sentence in Kilgoris
PMCR No. 790 of 2016, and Kisii HCCRA NO. 30 of 2020)*

JUDGMENT

Sentence review

1. Before the court is an undated application filed on 18/11/2021 for sentence review. The applicant is seeking a lenient definite sentence as provided for under article 50(2)(p)(q) of *the constitution*, and consideration of time spent in remand in accordance with section 333(2) of the *Criminal Procedure Code*.

Brief background of this case

2. The applicant was charged, convicted, and sentenced to 30 years imprisonment for the offence of robbery with violence contrary to section 296(2) of the *Penal Code* in Kilgoris PMCR No. 790 of 2016.
3. The applicant filed his first appeal, Kisii HCCRA No. 30 of 2020, which was dismissed in its entirety.
4. The applicant has stated in his supporting affidavit that he has never filed a second appeal to the court of appeal.
5. The applicant has now filed the instant application seeking re-sentencing before this court.



The Applicant's submissions

6. The applicant submitted that he is reformed, has benefitted from the rehabilitation programs offered in prison, and wishes to be reintegrated back into society.
7. The applicant submitted that the sentence imposed on him is harsh.
8. The applicant prayed for time spent in custody to be considered and also prayed for a non-custodial sentence.

The Respondent's submissions.

9. The respondent submitted that the applicant's sentence having been upheld by the High Court at Kisii on Appeal, can only be legally challenged by way of an appeal as opposed to the present review proceedings. The applicant's review for a more lenient sentence, as well as the application to factor in the time, served in remand prior to his sentencing at the subordinate trial court, before this court is bad in law and ought to be dismissed.

Analysis And Determination

Of jurisdiction.

10. The prosecution stated that this court is *functus officio* after it dismissed his appeal (Ougo J.) in Kisii.
11. In the circumstances of this case, possible recourse for remedy is in the Court of Appeal where he may seek reduced or lenient sentence.

Abuse of process of the court

12. This is not the only court lamenting that, the flood in Mruatetu decisional law is now coming inland with dangerous debris. Inmates are now abusing the court process in the name of re-sentencing.
13. This application may well be said to be an abuse of process of the court especially in light of the fact that this court (Ougo J) considered the alleged severity of sentence in the appeal and concluded: -
 24. The appellant was sentenced to 30 year's imprisonment. I have taken into account that he was not a first offender. I have also considered the grisly manner in which the appellant committed the offense. The appellant was an ex-employee of the complainant hid in her house and waited until she was dead asleep before attacking her and subsequently stabbing her. The complainant, who has left bleeding and locked in her house her own house, must have suffered great trauma in the circumstance.
 25. This court being satisfied that the trial court was entitled to arrive at the conclusion it did, I find no reason to disturb the finding on sentence. This appeal is therefore lacking in merit and it is hereby dismissed.
14. For, those reasons, the applicant has not laid down any legal basis that would justify further revision of his sentence by substituting it with a non-custodial sentence. The application is dismissed.
15. Orders accordingly.

DATED, SIGNED, AND DELIVERED AT NAROK THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 5TH DAY OF MARCH , 2024.

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HON. F. GIKONYO M.

JUDGE

In the presence of:

C/A – Mr. Leken

Applicant - Present

Mr. Okeyo for DPP – Present

