



**Mutai v Republic (Miscellaneous Criminal Application
E073 of 2023) [2024] KEHC 5334 (KLR) (16 May 2024) (Revision)**

Neutral citation: [2024] KEHC 5334 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
MISCELLANEOUS CRIMINAL APPLICATION E073 OF 2023**

JK SERGON, J

MAY 16, 2024

BETWEEN

KENNETH KIPKURUI MUTAI APPLICANT

AND

REPUBLIC RESPONDENT

REVISION

1. The Applicant was convicted and sentenced to twenty (20) years imprisonment for the offence of murder contrary to section 203 as read with section 204 of the Penal Code by Lady Justice Asenath Ongeru vide Criminal Case No 21 of 2019.
2. The Applicant being dissatisfied with the sentence meted out filed the instant application for sentence review. The applicant deemed the sentence as harsh and excessive as he did not have a prior conviction record. The Applicant conceded that he was convicted of the offence of murder, however, he was remorseful for commission of the instant offence. The Applicant maintained that on account of the time spent in incarceration, he was reformed and rehabilitated.
3. The matter came up for inter partes hearing on 11th March, 2024. The prosecution opposed the application. The prosecution submitted that the assertion that the sentence meted out by the Trial Court was harsh and excessive is a ground for appeal and therefore the instant application for sentence review should be dismissed. The applicant urged this Court to reduce the sentence as he was not ready to prefer an appeal.
4. The following legal provisions empower this Court to entertain sentence review applications; Article 165 of the Constitution which clothes the High Court with jurisdiction to hear and determine applications for redress of a denial, violation or infringement of or threat to a right or fundamental freedom in the bill of rights as well as Article 50 (2) (p) (q) as read with Article 50 (6) (a) and (b) of the Constitution.



5. This Court is cognisant of the fact that it is the right of a person who has been convicted and sentenced for a criminal offence, to appeal or apply for review by a higher court as prescribed in law. The right is part of the larger right to a fair trial as is provided in Article 50 (2) of the Constitution.
6. It is clear from the instant application that the applicant has invoked this Court's revisionary jurisdiction, however, section 364 (5) of the Criminal Procedure Code provides that; "When an appeal lies from a finding, sentence or order and no appeal is brought, no proceedings by way of revision shall be entertained at the instant of the party who could have appealed." In the circumstances, this Court cannot entertain the application for sentence review. Furthermore, in the present application, I find that there is no new and compelling evidence that has become available to entertain the issues on review of sentence. For those reasons, I find that the instant application lacks merit and is hereby dismissed.

DATED, SIGNED AND DELIVERED AT KERICHO THIS 16TH DAY OF MAY, 2024.

J.K. SERGON

JUDGE

In the presence of:

C/Assistant - Rutoh

Prosecutor – Mr Musyoki

Applicant – Present in Person

