



**Langat v Republic (Miscellaneous Criminal Application  
E008 of 2023) [2024] KEHC 9572 (KLR) (25 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9572 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BOMET  
MISCELLANEOUS CRIMINAL APPLICATION E008 OF 2023**

**RL KORIR, J**

**JULY 25, 2024**

**BETWEEN**

**KENNETH KIPROTICH LANGAT ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant was charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. He was convicted of the offence of murder by this court (Ongeru J) on 3rd August 2020. I took over the case at the sentencing hearing stage. After considering the Applicant's mitigation, I sentenced him on 27th January 2021 to serve 20 years in prison.
2. The Applicant has now applied for re-sentencing and asked this court to award him a lenient sentence in line with Article 50 (2) (p) (q) of the Constitution of Kenya.

**The Applicant's submissions**

3. In his submissions filed on 26th May 2024, the Applicant submitted that he had asked for forgiveness from the deceased's family and community. That since he had been to prison, he had been rehabilitated and reformed and he acquired skills in prison which include carpentry, welding, KCPE Certificate and Certificate in Theological Studies. He further submitted that he was ready to be productive in nation building. That this court should consider the time he has served in prison as sufficient.
4. It was the Applicant's submission that he was the sole bread winner of his young family and that his children were suffering. That this court should give him a lesser sentence so that he could go and attend to his children.
5. The Applicant attached a recommendation from Bomet Prison which indicated that he had been attached to the carpentry and industry section of the Prison. That he was hard working and could



work without any supervision. The Applicant also attached several commendation Certificates for this court's consideration.

### **The Respondent's submissions**

6. Through their submissions filed on 16th July 2024, the Respondent submitted that this court was functus officio. That this court had already expressed itself on the sentence and as a matter of law had downed its tools. They further submitted that the Applicant should seek a remedy at the Court of Appeal which has the requisite jurisdiction to review the sentence of this court.

### **Analysis and determination**

7. As earlier stated in this Ruling, the Applicant having been charged with the offence of murder was convicted of the by this court (Ongeri J) on 3rd August 2020. He was subsequently sentenced by this court on 27th January 2021 to serve 20 years in prison.
8. As a general rule, the High Court can only review the Judgment of a subordinate court as provided for under sections 362 to 364 of the *Criminal Procedure Code*. This court therefore does not have the jurisdiction to review its own decision. In *John Kagunda Kariuki vs Republic* (2019) eKLR, Ngugi J. (as he then was) held that:-

“In the present case, the Applicant's appeal has already been heard by the High Court. He cannot return to the High Court for a review of the sentence imposed. He is at liberty to make an argument for reduced sentence at the Court of Appeal”.

9. In the case of *Daniel Otieno Oracha vs Republic* (2019)eKLR, the Petitioner had applied for review of a sentence imposed by a court of concurrent jurisdiction and Aburili J. held that:-

“The law abhors that practice of a judge sitting to review a judgment or decision of another judge of concurrent jurisdiction. Reduction of sentence could only be considered by the Court of Appeal or if this court was sitting on appeal of a judgment of the subordinate court or if the petitioner was seeking for resentence after exhausting appeal mechanisms and not otherwise.....

The judgment of Abida Ali-Aroni J made in accordance with the law has not been challenged. This court cannot sit on appeal of its own judgment or of court of concurrent competent jurisdiction when the Petitioner had an opportunity to ventilate his grievance before the Court of Appeal even if it was to challenge sentence alone.

Good governance demands that cases be handled procedurally in the right forum. This is because the rule of the thumb that superior courts cannot sit in review/appeal over decisions of their peers of equal and competent jurisdiction much less those courts higher than themselves and that matters falling under the exclusive jurisdiction of Supreme Court under Article 163(3) cannot be dealt with by the High Court.....”

10. I am persuaded by the authorities above which correctly state the legal position. This court has already determined and passed the Applicant's sentence. Any further recourse that the Applicant has in regards to his sentence lies in the Court of Appeal and not in this court.
11. In the end, I find that this court has no jurisdiction to review its own Judgment and Sentence. The Application lacks merit and the same is dismissed.

Orders accordingly.



**RULING DELIVERED, DATED AND SIGNED THIS 25TH DAY OF JULY, 2024.**

.....

**R. LAGAT-KORIR**

**JUDGE**

Ruling delivered in the presence of the Applicant acting in person, Mr. Njeru for the Republic and Siele (Court Assistant).

