



**Simiyu v Republic (Criminal Miscellaneous Application
E021 of 2024) [2024] KEHC 10720 (KLR) (24 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 10720 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CRIMINAL MISCELLANEOUS APPLICATION E021 OF 2024**

REA OUGO, J

JULY 24, 2024

BETWEEN

GODFREY WAFULA SIMIYU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Godfrey Wafula Simiyu, the applicant has filed a Motion seeking the following orders, the court grants orders for sentence review in respect of HCCRC No. 26 of 2011 at Bungoma. The application is supported by grounds on the face of the application. The grounds are as follows; the applicant was charged with the offence of murder contrary to section 203 as read section 204 of the penal code and sentenced to 20 years. The applicant appealed to the Court of Appeal at Eldoret *vide* Court of Appeal No. 279 of 2019. The same was dismissed lack of merit. The applicant has exhausted all appeal avenues and his only approach is to the High Court for mitigation. Section 26 (2) of the Penal Code allows this court to hear and allows the applicant's sentence to be reduced to a very least severe form. The court has unlimited jurisdiction to hear and determine the instant application on sentencing re-hearing and reduction.
2. Miss Matere for the respondent did not submit on the application.
3. The applicant was charged before the High Court in Bungoma in HCCRC No. 26 of 2011. He was found guilty of the offence of murder and sentenced. His appeal before the Court of Appeal was dismissed. He admits he is currently serving a 20-year imprisonment. He has cited section 26 (2) of the Penal Code, which provides as follows; Save as may be expressly provided by the law under which the offence concerned is punishable, a person liable to imprisonment for life or any other period may be sentenced to any shorter term. This provision of the law does not apply to the applicant's case as he has already been sentenced.



4. The applicant has admitted that he has exhausted all avenues of appeal. He is back in the High Court the court that heard his case on murder and sentenced him. This court lacks the jurisdiction to rehear the matter even on sentencing. The application before me lacks merit and is dismissed. The file is closed.

DATED, SIGNED AND DELIVERED VIRTUALLY AT BUNGOMA THIS 24TH DAY OF JULY 2024.

R.E.OUGO

JUDGE

In the presence of:

Godfrey Wafula Simiyu - Applicant

Miss Matere -Respondent/ State

Wilkister/ Diana - C/A

