



**Kiai v Republic (Revision Case E041 of 2024)
[2024] KEHC 11100 (KLR) (24 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 11100 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
REVISION CASE E041 OF 2024
JN ONYIEGO, J
SEPTEMBER 24, 2024**

BETWEEN

ISMAIL ALI KIAI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant was charged and convicted for the offence of manslaughter vide Garissa High Court Criminal Case No. 3 of 2018. He was consequently sentenced to 15 years' imprisonment on 28.12.2021.
2. Subsequently, the applicant lodged a resentencing petition before this court seeking a myriad of orders among them review of the sentence meted out pursuant to section 333(2) of the Criminal Procedure Code.
3. He urged that in as much as the court mentioned that it had factored the time spent in remand custody, it did not indicate when his sentence was to commence. That he was desirous of the court to consider the time spent in lawful custody pursuant to article 23,27,47,165(3)(d)(ii) of *the constitution* and section 333(2) of the Criminal Procedure Code. He placed reliance on the cases of Boniface Mugo Maingi vs Republic in Criminal Misc. Application *No. 2 of 2019* at Garissa High Court and Ahamad Abolfathi Mohamed & Another vs Republic [2018] eKLR and Court of Appeal Criminal Appeal No. 135 of 2016 at Nairobi.
4. The application was canvassed by way of oral submissions. The applicant reiterated the content of his application while contending that he has since reformed. He urged this court to find his application merited and thereby resentence him.
5. Mr. Kihara, the learned counsel for the prosecution in rebuttal submitted that the application was underserved as the same had been determined by a court of equal jurisdiction to this court. That the



orders sought herein could only be entertained by the Court of Appeal thus this court should dismiss the application for the same is in want of merit.

6. I have considered the application herein together with the oral submissions by both parties. The only issued for determination is whether the order for sentence review can be granted.
7. Article 165 of *the Constitution* does empower 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*.
8. It should be noted that the instant application is not an appeal but an application seeking for review of sentence. Having perused the record herein, I note that the trial judge noted that she had considered the fact that the applicant had spent 4 years in custody awaiting trial and thus proceeded to sentence him to 15 years' imprisonment. When the court stated that it had considered 4 years spent in remand before pronouncing the 15 years sentence, it implies in my opinion that she had already deducted the 4 years before pronouncing the actual sentence.
9. In my view, this court cannot go back and consider the same as it is functus officio. To entertain the same would be akin to this court sitting on its appeal.
10. It therefore follows that this instant application amounts to an abuse of the Court process and as such, the same is hereby ordered dismissed.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 24TH DAY OF SEPTEMBER 2024

J. N. ONYIEGO

JUDGE

