



**Nyakidi v Republic (Miscellaneous Criminal Application
136 of 2023) [2024] KEHC 13436 (KLR) (22 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13436 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
MISCELLANEOUS CRIMINAL APPLICATION 136 OF 2023
RE ABURILI, J
OCTOBER 22, 2024**

BETWEEN

SIMON OUMA NYAKIDI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant Simon Ouma Nyakidi is a convict vide Siaya HCR 17/2015 for murder contrary to Section 203 as read with Section 204 of the [Penal Code](#). He was sentenced to serve 40 years imprisonment on 19/4/2018 by Justice J. A Makau, (as he then was).
2. From his application subject of this ruling, which application is dated 24/7/2023, he appealed to the Court of Appeal, which appeal is still pending.
3. He now seeks for revision of the 40 years' prison term and he claims that he was handed a mandatory minimum sentence which is ambiguous.
4. I have considered the application which my late brother Judge Ogembo (RIP) was unable to conclude before his untimely death and wherein he had granted the prosecution time to file submissions to canvass the application.
5. I have also considered the submission filed by the applicant on 28/11/2023. The applicant claims that this court should consider his age, health and family status, his attitude, conduct and behaviour as well as him being a first offender in revising his 40 years' prison term.
6. I observe that the applicant has an appeal pending before the Court of Appeal and secondly, that he was not handed mandatory death sentence. That being the case, this court is completely devoid of any jurisdiction to revise the lawful sentence imposed in exercise of judicial discretion of the Judge of concurrent and competent jurisdiction.



7. Further, that this Court has no jurisdiction to entertain a matter whose appeal is still being considered by the Court of Appeal.
8. Accordingly, the application dated 24/7/2024 is found to be devoid of any merit and is hereby dismissed. Signal to issue.

This file is closed.

RULING DATED, SIGNED AND DELIVERED THIS 22ND DAY OF OCTOBER, 2024

R. E. ABURILI

JUDGE

