



**Ingotsi v Republic (Miscellaneous Criminal Application  
E014 of 2022) [2023] KEHC 20570 (KLR) (21 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20570 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
MISCELLANEOUS CRIMINAL APPLICATION E014 OF 2022**

**WM MUSYOKA, J**

**JULY 21, 2023**

**BETWEEN**

**OSCAR INGOTSI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Revision/review of sentence arising from orders made on 17th June 2009,  
in Kakamega SPMCCRC No. 140 of 2009 (Republic vs. Godfrey Shimonyo  
& Oscar Ingotsi), by Hon. Kimani Ndung'u, Principal Magistrate, PM)*

**RULING**

1. The applicant seeks that section 333(2) of the [Criminal Procedure Code](#), Cap 75, Laws of Kenya, be reckoned in calculation of his sentence.
2. When the applicant was sentenced on June 17, 2009, section 333(2) could not be applied, as he had been sentenced to death, yet section 333(2) applies only to a fixed jail term. When the matter went to the High Court on appeal, in Kakamega HCCRA Nos 83 & 84 of 2009, the circumstances did not change, for his appeal was dismissed on February 23, 2011, the sentence imposed by the trial court was not interfered with.
3. At the Court of Appeal, in Kisumu CRA No 109 of 2016, the conviction was upheld, but the death sentence was set aside, and substituted with a sentence of 25 years imprisonment, in the judgment delivered on October 8, 2021. The Court of Appeal did not apply section 333(2) of the [Criminal Procedure Code](#), to that imprisonment sentence. The instant proceedings were initiated after delivery of the said judgment.
4. The sentence imposed by the trial court can only be revisited on appeal or revision. Appeals were brought in this matter. The first was to the High Court, from the decision of the trial court. The High Court upheld the decision of the trial court. The second appeal was to the Court of Appeal, from



the decision of the High Court. The Court of Appeal upheld the conviction, but interfered with the sentence, by substituting death with a term in jail.

5. Revision, under the [Criminal Procedure Code](#), is a jurisdiction vested in the High Court, under section 362, with respect to decisions of subordinate courts. The revision, that I am being invited to make, is of a decision of the Court of Appeal. Hierarchically, the Court of Appeal is above the High Court, and there can be no occasion for the High Court to revisit a decision of the Court of Appeal, under any circumstances, with a view to revise it. The applicant should have sought review of the Court of Appeal order at that court, if jurisdiction exists for the same.
6. I have no jurisdiction to exercise discretion, with respect to section 333(2) of the [Criminal Procedure Code](#), to the sentence that the Court of Appeal imposed, in its judgment of October 8, 2021. Consequently, the application of February 23, 2022 is improperly before me, and I hereby dismiss it. The order herein shall also apply to Kakamega High Court Miscellaneous Criminal Application No E013 of 2022, Godfrey Shimonyo vs Republic.

**RULING DELIVERED, DATED AND SIGNED AT KAKAMEGA ON THIS.....21<sup>ST</sup>  
.....DAY OF .....JULY.....2023**

**WM MUSYOKA**

**JUDGE**

Mr. Erick Zalo, Court Assistant.

**Appearances**

Oscar Ingotsi and Godfrey Shimonyo, in person.

Ms. Kagai, instructed by the Director of Public Prosecutions, for the respondent.

