



**Olugo v Republic (Miscellaneous Criminal Application
E054 of 2023) [2023] KEHC 19930 (KLR) (12 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 19930 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
MISCELLANEOUS CRIMINAL APPLICATION E054 OF 2023**

**DO OGEMBO, J
JULY 12, 2023**

BETWEEN

WISCONSIN OTIENO OLUGO APPLICANT

AND

REPUBLIC RESPONDENT

(Arising from Siaya CM's Court, Criminal Case No 109 of 2011.)

RULING

1. The applicant, Wisconsin Otieno Olugo, has moved this court by way of a Notice of Motion application filed in court on May 8, 2023. The application, brought under section 333(2) of the [Criminal Procedure Code](#) seeks that the sentence of the applicant be revised to account for the period the applicant spent in remand custody as he awaiting the determination of his case.
2. In the Affidavit in support of the application, the applicant has deponed that he was tried and convicted by the lower court and sentenced to life imprisonment. This was in Siaya CM's Court, Criminal Case No 109 of 2011.
3. That his appeal (being Kisumu High Court Criminal Appeal No 111 of 2012) was dismissed. This was on July 21, 2015. That he filed a second appeal to the Court of Appeal being Court of Appeal Criminal Appeal No 127 of 2015. In the judgment delivered by the court, his appeal on conviction was dismissed. The court however committed his life sentence to a term of 20 years imprisonment.
4. Section 333(2) of the [Criminal Procedure Code](#) under which this application is brought, provides as follows;

“Provided that where the person sentenced under subsection (1) has prior to such sentence been held in custody, the sentence shall take account the period spent in custody.”



5. I have perused the Judgment of the Court of Appeal on the 2nd appeal of the applicant (Justices Asiko Makhandia, P.O. Kiage and Otieno Odek, JJAs), as provided by the applicant. In the said judgment, the Court of Appeal, in commuting the death sentence of the applicant to one of a term of 20 years imprisonment, dwelt exhaustively with the issue of sentence. The court finally held:

“For the reason we have set out herein, we dismiss the appeal against conviction. We allow it on sentence, however, to the extent that we set aside the life sentence and substitute it with one of 20 years imprisonment to run from the time the trial court imposed its sentence.”

6. From the above finding, it is clear that the Court of Appeal exhaustively determined the issue of sentence herein to the extent of declaring the date from when the sentence should run. The Court of Appeal is a superior court to this court and its decisions are binding on this court. This application of the applicant seeks an order which is tantamount to this court revising the decision of the Court of Appeal. This court neither has the jurisdiction nor any legal authority to revise any orders, ruling or determination of the Court of Appeal.

7. It is for this reason, that I find the application of the applicant filed herein on 8/5/2023 incompetent and lacking in any merit.

8. The same is accordingly wholly dismissed.

It is so ordered.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 12TH DAY OF JULY, 2023

D.O. OGEMBO

JUDGE

12 . 7. 2023

Court:

Ruling read out in Open Court in the presence of the applicant and Ms. Mumu for the respondent.

D.O. OGEMBO,

JUDGE

12 . 7. 2023

