



**Lutta v Republic (Miscellaneous Criminal Application E050 of 2023)
[2023] KEHC 24013 (KLR) (24 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 24013 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
MISCELLANEOUS CRIMINAL APPLICATION E050 OF 2023
DO OGEMBO, J
OCTOBER 24, 2023**

BETWEEN

JOEL OGOLA LUTTA ALIAS DADDY APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant, Joel Ogola Lutta alias Daddy, has applied to this court by way of a Chamber Summons application filed herein on 19-4-2023. The same seeks review of the sentence herein. In the Affidavit in support of the application, the applicant depones that he was charged and convicted of the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code and sentenced to serve 35 years imprisonment.
2. The applicant has now applied for revision based on the case of *Francis Karioko Muruatetu & Another v R*, Petition 15 and 16 of 2015. And that he has undergone many rehabilitative courses. He prays that a non-custodial sentence.
3. The Respondent has opposed the application on the basis that the sentence is proper and lenient and that the applicant's appeal is pending before the Court of Appeal. That this court therefore lacks jurisdiction to entertain this matter.
4. I have considered the application of the applicant, the submissions made and the objections raised to it by the Prosecution. The applicant faced a murder charge, being Siaya HCCR Case No. 18 of 2019. The record of proceedings clearly show that on 21/4/2021, the applicant was accorded the opportunity to mitigate which he did as follow: -

“...accused is a family man. His wife is present in court. His wife is jobless and it is boda boda riding that he relied on for livelihood. He is remorseful. His mother also depends on him. She is hypertensive and in need of comprehensive care. His incarceration has had a negative



effect on the health of the mother and is warned that if given custodial sentence, the mother would suffer. He has reflected on his actions and regrets that a life was lost. He appreciates that deceased was a family person. He is remorseful for his actions which caused the death of the deceased.”

5. The applicant himself was also given the opportunity to further mitigate in person. In the mitigation, he expressed remorse and asked for forgiveness amongst other issues.
6. The court duly considered the mitigation of the accused. Having been given the opportunity to mitigate, the applicant, cannot now make an application based on the Muruatetu decision of the Supreme Court.
7. The judgment and sentence was meted out on 21/4/2023 by Hon Justice R E Aburili, a Judge of the concurrent jurisdiction. Inviting this court to revise the sentence herein would be asking this court to sit on appeal on a decision of a court of concurrent jurisdiction. This court does not have any constitutional or legal mandate to do this.
8. The court has been informed that applicant’s appeal to the Court of Appeal is still pending determination. It is only proper in the circumstances to let the applicant pursue his appeal before the Court of Appeal.
9. For reasons above, I do not find any merit in the application of the applicant filed herein on 19/4/2023. The same is accordingly dismissed. It is ordered.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 24TH DAY OF OCTOBER, 2023

D.O. OGEMBO

JUDGE

24.10.2023

Court:

File ordered closed

D.O. OGEMBO

JUDGE

24.10.2023

