



**Mugambi v Republic (Miscellaneous Criminal Application  
E008 of 2023) [2023] KEHC 23368 (KLR) (12 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 23368 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT CHUKA  
MISCELLANEOUS CRIMINAL APPLICATION E008 OF 2023**

**LW GITARI, J  
OCTOBER 12, 2023**

**BETWEEN**

**FELIX MUTWIRI MUGAMBI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Before this court is the Applicant's Notice of motion application dated 11<sup>th</sup> April, 2023. The application seeks in the main for an order allowing the Applicant to bring further submissions in mitigation.
2. The background of this application is that the Applicant was charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code* (cap 63 of the Laws of Kenya). He appeared before this Court in Chuka High Court Criminal Case no 9 of 2019 where a plea of not guilty was entered. Subsequently, the Applicant entered into a plea bargain agreement and the Applicant entered a plea of guilty to the lesser charge of manslaughter. He was then sentenced to serve fourteen (14) years' imprisonment.
3. The Application is supported by the affidavit sworn by the Applicant on dated that was not indicated. He prayed for this honourable court to allow him to bring further mitigation and for the same to be considered as he did not have any matter pending in any court.
4. The Application is opposed by the Respondent and the parties initially agreed to canvass the Application by way of written submissions. However, the Applicant later indicated that on his part, the Court could rely on his Petition.
5. On the part of the Respondent, counsel for the state made oral submissions. It was the Respondent's submission that the Applicant did not get the maximum sentence of manslaughter. Further, that since the Court already gave the sentence, it lacks jurisdiction to alter its own sentence.



6. I have considered the application by the Applicant, the affidavit sworn in support of the application as well as the submissions made on behalf of the state. The Application is in its nature a request for a revision of the sentence. From the original record of the trial court, I have confirmed that indeed the Applicant pleaded guilty to the lesser charge of manslaughter, was convicted accordingly, and subsequently sentenced to serve 14 years' imprisonment. It follows that the only issue for this Court to determine is whether the Application is warranted.
7. From the onset, it is important to point out that the jurisdiction of this Court is provided for under Article 165 of the Constitution and includes unlimited original jurisdiction in criminal and civil matters; jurisdiction to enforce bill of rights; appellate jurisdiction; interpretive jurisdiction; any other jurisdiction, original or appellate conferred on it by any legislation; and supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court. The said Article does not clothe this Court with jurisdiction to review its own decision or a decision of a court of concurrent jurisdiction. Further, the revisionary jurisdiction of this Court under Sections 362 and 364 of the Criminal Procedure Code is only limited to proceedings from subordinate courts.
8. The sentence which the Applicant now seeks to be reviewed by being allowed to make further submission in mitigation was imposed by this same Court. Allowing the Application would mean that this Court can review its own sentence which would in turn amount to this Court sitting on its own appeal which is unacceptable under the law. This Court became functus officio the moment Hon. Justice R. K. Limo pronounced himself on the sentence to be imposed against the Applicant. Remitting a matter to the trial court which had become functus officio after sentencing flies in the face of the doctrine of *functus officio*. I therefore entirely agree with the learned State Counsel that this court lacks jurisdiction to alter its own sentence. The only recourse that the Applicant has at this point is to move the Court of Appeal and appeal against the sentence which is clothed with the jurisdiction to hear appeals from the High Court under Article 164 (3) of the Constitution and Section 379 (1) of the Criminal Procedure Code.
9. I am persuaded by the case of Joseph Maburu alias Ayub v Republic [2019] eKLR where the court stated that:-

“Sentencing is a judicial exercise. Once a judge or a judicial officer has pronounced a sentence, he/she becomes functus officio. If the sentence is illegal or inappropriate the only court which can address it is the appellate one. Black’s Law Dictionary Tenth (10<sup>th</sup>) Edition describes defines sentence as:

“The judgement that a court formally pronounces after finding a criminal defendant guilty; the punishment imposed on a criminal wrongdoer.”

Remitting a matter to the trial court which had become functus officio after sentencing flies in the face of the doctrine of *functus officio*. It amounts to asking the trial court to clothe itself with the jurisdiction of an appellate court. This is an illegality.”

This notwithstanding, the sentence on the accused was imposed after a plea agreement was entered against him under the provisions of Section 137A of the Criminal Procedure Code (cap 75 Laws of Kenya). Under the agreement, the accused agreed that the court had the discretion to impose any sentence as provided by the law. Indeed under Section 137 F(d) of the Criminal Procedure Code (*supra*) the accused agrees (*supra*) the accused agrees that the court may impose any maximum possible sentence



including imprisonment, fine, Community Service Order, Probation or conditional or unconditional discharge.

Under Section 137 F (u) it is provided that-

“ that by entering into a plea agreement he is waiving the right to appeal except as to the extent or legality of the sentence.

The section further states that the Judgment entered shall be final. Section 137L of the *Criminal Procedure Code* (*supra*) states:-

“Finality of Judgment”

“ Subject to subsection (2) the sentence passed by a court under this part shall be final and no appeal shall lie therefrom except as to the extent or legality of the sentence imposed.”

The import of these provisions is that where an accused person enters a plea agreement with the State, there is no right to appeal except to the extent of the legality of the sentence. I find that under the same breath the accused has no right to apply for revision of the sentence imposed after a plea agreement. The Act provides for an appeal only to the extent of legality of the sentence and not revision.

Finally I note that the accused is seeking an order to be allowed to file additional mitigation. He relies on the case of *Francis Karioko Muruatetu v Republic & Others*, pet 15/2015, Supreme Court of Kenya. I find the case is not relevant as the accused was not sentenced to the mandatory death which the Supreme Court dealt with.

The record shows that the accused was given an opportunity to mitigate and his mitigation was considered. There is no provision under the law which allows an accused person to file additional mitigation long after the sentence was imposed.

**Conclusion:**

This Petition is not founded on any law and is without merits. I order that the Petition be dismissed.

**DATED, SIGNED AND DELIVERED AT CHUKA THIS 12<sup>TH</sup> DAY OF OCTOBER 2023.**

**L.W. GITARI**

**JUDGE**

