



**Pamba v Republic (Miscellaneous Criminal Application E003 & E015 of 2023
(Consolidated)) [2024] KEHC 12529 (KLR) (18 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12529 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
MISCELLANEOUS CRIMINAL APPLICATION E003 & E015 OF 2023 (CONSOLIDATED)**

**WM MUSYOKA, J
OCTOBER 18, 2024**

BETWEEN

CALEB OMONDI PAMBA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant had been convicted, in Busia HCCRC No. 11 of 2012, of murder, contrary to section 203, as read with section 204, of the *Penal Code*, Cap 63, Laws of Kenya, which attracts, upon conviction, the death penalty, and the trial court had imposed that sentence. He filed an appeal, in Kisumu CACRA No. 46 of 2016, which was dismissed, on the conviction, but the death sentence was substituted with imprisonment for a period of 25 years, guided by *Francis Karioko Muruatetu & another vs. Republic* [2017] eKLR (Maraga CJ&P, Mwilu DCJ&VP, Ojwang, Wanjala, Njoki & Lenaola, SCJJ).
2. In the applications, in HC Miscellaneous Applications Nos. E003 and E015 of 2023, he pleads that the period he spent in custody was not taken into account in sentencing, hence the court ought, in exercise of the discretion given by section 333(2) of the *Criminal Procedure Code*, Cap 75, Laws of Kenya, to review the sentence imposed by the Court of Appeal, by taking the period that he spent in custody into account.
3. This court sentenced the applicant to death, and it was the Court of Appeal that reduced that sentence to 25 years imprisonment. The decision, that the applicant is inviting me to review, was imposed by the Court of Appeal. A court can revise or review its own decision, or that of a court inferior or subordinate to it. There is no jurisdiction to review a sentence imposed by a higher court. See *Grace Sarapay Wakhungu & 2 others vs. Republic* Nairobi CACRA No. E039 of 2022 (Makhandia, Kiage & Aroni, JJA).



4. If the applicant felt that the Court of Appeal did not consider certain aspects of the matter that was before it, in its judgment of 21st November 2019, when it was considering to substitute the sentence imposed at the High Court, then that issue could only be revisited at the Court of Appeal, by way of review, should that be available to the applicant, and not at the High Court. The alternative would have been a further appeal, to the Supreme Court, if that was available to him.
5. As it is, I have no jurisdiction, sitting as the High Court, to revisit the matter of the sentence of imprisonment, when that issue was determined at the Court of Appeal. The applicant should have exhaustively litigated it there, and if the Court of Appeal did not consider it, then take the steps that I have mentioned in paragraph 4, foregoing, should that be available to him. For lack of jurisdiction, I hereby drop my tools, with the consequence that the applications, in HC Miscellaneous Applications Nos. E003 and E015 of 2023, are hereby struck out. The consolidated file shall be closed.
6. It is so ordered.

RULING DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA ON THIS 18TH DAY OF OCTOBER 2024.

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Mr. Caleb Omondi Pamba, the applicant in person.

Advocates

Mr. Onanda, instructed by the Director of Public Prosecutions, for the respondent.

