



**Hajir v Republic (Miscellaneous Criminal Application E002 of 2024)
[2024] KEHC 13814 (KLR) (7 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 13814 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
MISCELLANEOUS CRIMINAL APPLICATION E002 OF 2024**

**JN ONYIEGO, J
NOVEMBER 7, 2024**

BETWEEN

ABDIRAHMAN MOHAMED HAJIR APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Abdirahman Mohamed Hajir, the applicant herein, was charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code*. The particulars were that on 09.07.2014 at Gulet area in Garissa Township within Garissa County jointly with others not before court murdered Mohamed Hassan Abdi. He was tried, convicted and thereafter sentenced to suffer death.
2. Being dissatisfied with the conviction and sentence by the trial court, he appealed to the Court of Appeal which upon considering the same, on 10.07.2020 dismissed the same by upholding the finding of this court.
3. The applicant has filed the current application dated 09.01.2024 seeking to have this court hear his mitigation and thereafter resentence him. He averred that the sentence meted out against him is unconstitutional and therefore, this court should proceed and mete out a lenient sentence. That the trial court did not consider his mitigation due to the mandatory nature of the sentence despite him being a first offender. He placed reliance on the Kenya Gazette Notice Vol. CXXV No. 195 of 01.09.2023 at page 3805 to urge that persons convicted of murder after '*Muruatetu 1*' and who are on life sentence but whose mitigation was not heard are at liberty to apply to the High Court for mitigation and resentencing. Noting that he did not mitigate after conviction, he urged that this court if pleased, should give him an opportunity to do so and thereafter reconsider his sentence.
4. During the hearing of the application, the applicant urged this court to allow his prayers while Mr. Okemwa, counsel for the respondent filed an undated submissions supporting the application.



Counsel urged that the applicant previously had filed an appeal against his conviction and sentence before the Court of Appeal which was dismissed for want of merit.

5. In the same breadth, the applicant previously filed an application seeking similar prayers before this court and the same was equally dismissed. It was contended that in a similar case, the Court of Appeal in the case of Julius Kitsao Mayeso v Republic, held that imposition of a mandatory sentence without any possibility of mitigation was unjustifiably unfair. That the same under article 27 as read with article 28 of the *Constitution*, and in reference to the case of *Vinter & others v United Kingdom* and *Republic v Beiber* the court held that mandatory life imprisonment without any scope of mitigation is inhumane.
6. It was conceded that indeed the applicant's mitigation and the time spent in lawful custody was not considered as mirrored against section 333(2) of the *Criminal Procedure Code*. To that end, Counsel urged this court to consider the time spent by the applicant while in lawful custody and allow the prayers sought.
7. I have considered the application before me, the oral and written submissions by the parties. The only issue for determination is whether the applicant's prayer for mitigation and resentencing should be granted.
8. It is not in dispute that having been aggrieved by the judgement of this court the applicant appealed to the Court of Appeal and the appeal upon being heard and determined, was dismissed 10-07-2020 for want of merit. The court of appeal considered the application of muruatetu case and could not find it relevant. The court of appeal emphasized that life was lost and that the accused deserved death. This being a junior court to the court of appeal can not purport to review the same sentence.
9. It is trite 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. Noting that the Court of Appeal considered all the facts and the law involved and upheld the decision by this court, clearly, this court must down its tools.
10. From the foregoing, I find that this court has no jurisdiction to entertain the application herein and the same is thus dismissed.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 7TH DAY OF NOVEMBER 2024

J. N. ONYIEGO

JUDGE

