



REPUBLIC OF KENYA



KENYA LAW
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**Muriuki v Republic (Criminal Miscellaneous Application E148 of 2023)
[2024] KEHC 14185 (KLR) (15 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14185 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL MISCELLANEOUS APPLICATION E148 OF 2023
HI ONG'UDI, J
NOVEMBER 15, 2024**

BETWEEN

GEOFFREY MWANGI MURIUKI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Geoffrey Mwangi Muriuki the applicant was the accused in Nakuru High Court Criminal Case No. 81 of 2010 where he was charged and convicted of Murder, contrary to section 203 as read with section 204 of the *Penal Code*, after a full hearing. This was on 22nd June, 2018 by M. Odero J.
2. He was later on 18th October, 2018 sentenced to ten (10) years imprisonment by Ngugi J (as he then was). The order on sentence was specific that the sentence was to be computed from the date of sentencing.
3. The applicant has filed this application dated 13th October, 2023 seeking the following orders:
 - i. Spent
 - ii. That the honourable court be pleased to order that his sentence in Criminal 20 of 2009 to run from the date he was remanded.
 - iii. That the honourable court be pleased to receive mitigation from the applicant herein for consideration of an appropriate sentence.
 - iv. That the honourable court be pleased to substitute his current sentence to probation sentence.
 - v. That the honourable court be pleased to issue any other order it may deem fit for interest of justice.



4. In his supporting affidavit and submissions, he expresses himself as a reformed person. He explained that prior to his imprisonment he was involved in an accident and the injuries thereof are causing him a lot of discomfort. That prior to his imprisonment he had been in custody for 13 months which he urges the court to take into consideration.
5. Prosecution counsel Mrs E. Okok opposed the application submitting that this court lacked jurisdiction to deal since the sentencing had been done by a court of equal jurisdiction with the present court.
6. Upon perusal of the record I have noted that Ngugi J (as he then was) did not only give a ten (10) year sentence but he went ahead and issued an order stating from when the sentence should commence. This is what the Judge stated:
 - “9. Consequently, in my view, a fit sentence that properly balances the mitigating circumstances with the aggravating circumstances is a sentence of ten years imprisonment. In coming up with this global sentence, I have considered the period the Accused Person was in custody during the pendency of the case.
 10. Accordingly, I sentence the Accused Person to ten years imprisonment to be computed starting today.
 11. Orders accordingly
7. The above being the position this court cannot interfere with the sentence which has a clear commencement date. The honourable Judge also states in his ruling that he had considered the period the accused was in custody during the pendency of the case. This is an issue that could only be addressed by the Court of Appeal had the applicant filed an appeal. I quite agree with the respondent that in the circumstances of this case, this court cannot interfere with the sentence, as doing so would amount to this court acting as an Appeal court over the decision of a court of equal status.
8. The upshot is that the application lacks merit and is hereby dismissed.
9. Orders accordingly

DELIVERED, DATED AND SIGNED THIS 15TH DAY OF NOVEMBER, 2024 IN OPEN COURT AT NAKURU.

**H. I. ONG’UDI
JUDGE**

