



**Mwalo v Republic (Miscellaneous Criminal Application E199 of 2024)
[2024] KEHC 13497 (KLR) (4 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 13497 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS CRIMINAL APPLICATION E199 OF 2024**

MS SHARIFF, J

NOVEMBER 4, 2024

BETWEEN

LUCAS OCHIENG MWALO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant Lucas Ochieng Mwalo was initially convicted of murder and sentenced to suffer death penalty in *Kisumu High Court Criminal Case No. 61 of 2011*.
2. In the year 2019 the Applicant petitioned the High Court in *Kisumu Petition No. 62 of 2019* for resentencing on grounds that his death sentence was unconstitutional. Justice T. W. Cherere then duly considered his petition and expressly took into account inter alia the pre-conviction term of 5 years that Applicant had served when she reduced his sentence from death to a definite custodial term of 20 years. This court is thus *functus officio* and the issue of Section 333(2) is *res judicata* as it had already been determined by a court of competent jurisdiction between the parties. The Applicant cannot keep reopening this issue at his own convenience dependent on when there is a new Judge on the block.
3. The Applicant’s conduct is what we call abuse of court process. This court will not countenance such abuse. Court proceedings must come to a closure and the Applicant’s case indeed came to a closure.
4. On the balance this application is devoid of merit and I thus dismiss it.
5. This file is marked as closed.

DELIVERED, SIGNED AND DATE IN KISUMU THIS 4TH DAY OF NOVEMBER, 2024.

M. S. SHARIFF

JUDGE

