



**Nuno v Republic (Miscellaneous Criminal Application E014 of 2024)
[2024] KEHC 15824 (KLR) (16 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15824 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
MISCELLANEOUS CRIMINAL APPLICATION E014 OF 2024
JN ONYIEGO, J
DECEMBER 16, 2024**

BETWEEN

SAID HASSAN NUNO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged with the offence of robbery with violence c/s 296(2) of the *Penal Code*. He was tried and convicted and sentenced to death by the trial court on 21.09.2005. Dissatisfied with the conviction and sentence, he appealed to the high court which upheld the sentence. Undeterred, he moved to the court of appeal which equally upheld the sentence on 19-11-2010.
2. He has now moved to this court for review of sentence. He argues that death penalty is inhuman. That his life imprisonment should be substituted with 30 years imprisonment pursuant to the court of appeal holding in Criminal Appeal No 22 of 2018 *Evans Nyamari Ayieko v Republic* where the court held that life imprisonment should be interpreted to mean 30 years.
3. Mr. Kihara prosecution counsel opposed the application urging that the court is functus officio.
4. I have considered the application herein and the response thereof. The Appellant is seeking this court to review the sentence imposed by the trial court and subsequently confirmed by the high court and court of appeal. It is trite law that this court cannot review a sentence that has been confirmed by a court of concurrent jurisdiction and later by a senior court. See *Gathige v Republic* (Miscellaneous Criminal Application E008 of 2022) [2022] KEHC 14733 (KLR) (31 October 2022) (Ruling) Neutral citation: [2022] KEHC 14733 (KLR)

“I have considered the fact that, upon conviction the applicant appealed to the High Court vide HCCRA No 9 of 2017, and upon considering the appeal the court dismissed it in its



entirety. Of great importance, the appellate court observed that, the sentence meted out by the trial court was too lenient.

The decision of the High Court on appeal renders this court functus officio. The applicant should have canvassed the issues herein in the aforesaid appeal. He cannot be allowed to litigate in piece meals”.

5. In the circumstances of this application, I am in agreement with the state’s submission that this court has no jurisdiction to re-open the case herein. It is simply functus officio. To that extent, the application is dismissed.

DATED, SIGNED AND DELIVERED THIS 16TH DAY OF DECEMBER THIS 2024

J. N. ONYIEGO

JUDGE

