



**Ngetich v Republic (Miscellaneous Criminal Application
E056 of 2024) [2024] KEHC 15295 (KLR) (5 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15295 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MISCELLANEOUS CRIMINAL APPLICATION E056 OF 2024**

**JM NANG'EA, J
DECEMBER 5, 2024**

BETWEEN

HESBON KIPLANGAT NGETICH APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was convicted of Murder contrary to section 203 as read with section 204 of the [Penal Code](#) before this court then presided over by Justice H.A Omondi , as she then was, in Criminal Case File No 36 of 2011 and sentenced to suffer death. He didn't lodge appeal but applied vide a similar Miscellaneous Application No 314 of 2018 seeking review of the sentence and succeeded as the death sentence was substituted with a 20 years prison term that was directed to commence from the date of the applicant's conviction.
2. The applicant yet again brought another Miscellaneous Application No 90 of 2020 praying for further review of the sentence which was dismissed. This application is now brought seeking resentencing by invocation of the provisions of sections 362, 363 and 364 (b) of the [Criminal Procedure Code](#) to substitute the balance of the sentence to a non-custodial sentence. By affidavit evidence in support of the application, the applicant avers that he has reformed and ready to abide by the law
3. The Prosecution Counsel (Ms Sang) replied by submissions filed on 11/12/2023 that this court has no jurisdiction to resentence the application in light of the decision of a court of concurrent jurisdiction that reviewed the sentence previously as shown. Reference is made to the judicial determination in the case of [Daniel Otino Oracha v Republic](#) (2019) eKLR in support of this submission. This decision embodies the important principle of stare decisis which prohibits relitigation of a matter that has been before another court of similar or higher jurisdiction.



4. The record indeed shows that the applicant did raise the issue of his sentence in the aforesaid Miscellaneous Applications which were finally determined by a fellow judge. Sections 362, 363 and 364 (b) of the Criminal Procedure Code the applicant cites in support of his plea are not relevant as they relate to the powers of this court to revise orders of subordinate courts issued in error where no appeal has been preferred . This is not quite the case in the instant matter.
5. Clearly, this application is unnecessary given the previous sentence review directions. The applicant is abusing the court's process by seeming to forum-shop which conduct is highly deprecated.
6. Accordingly, I concur with the prosecution that I have no jurisdiction to make further orders on the applicant's sentencing. This application is therefore dismissed.

J. M. NANG'EA, JUDGE.

RULING DELIVERED THIS 5TH DAY OF DECEMBER 2024 IN THE PRESENCE OF:

The state, Ms Sang

The Applicant, present

The Court Assistant, Lepikas

J. M. NANG'EA, JUDGE.

