



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MAKUENI**

**MISC. CRIMINAL APPLICATION. NO. E 047 OF 2024**

**DAVID WAMBUA MUTUNGA** .....

**APPLICANT**

**VERSUS**

**REPUBLIC** .....

**RESPONDENT**

**RULING**

- 1.** The application before me is dated 11/6/2024.
- 2.** The application comes under Article 165 (6) of the Constitution and Rule 21 of the Mutunga Rules.
- 3.** He seeks that the honorable Court be pleased to grant resentence hearing.
- 4.** The grounds are that;
  - a) *That the applicant was charged before Machakos High Court vide High Court Criminal Case No. 24 of 2016 for*

*an offence of murder contrary to section 203 as read with 204 of the Penal Code at Machakos High Court.*

*b) That the matter was referred back to Makueni High Court vide High Court Criminal Case No. 76 of 2017.*

*c) That the applicant was then tried, and sentenced to 25 years imprisonment by Justice H. Ongundi.*

*d) That, the applicant did not appeal to the Court of Appeal.*

*e) That, the applicant prays the court to consider that the time served as enough for retribution.*

*f) That, the applicant prays the sentence to begin from the date of arrest on 5/5/2016.*

*g) That, I have reformed and I have certificates which I will produce during the hearing of this application*

5. The application is supported by affidavit sworn by the applicant where he reiterates the above grounds

6. In oral submissions the applicant seeks from this court a review of the judgment dated 19/5/2021 delivered on 15/6/2021 so as to apply Section 333 (2) of the Criminal Procedure Code.

7. The only issue is whether the application is merited.

8. Article 165(6);

*The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.*

9. This court has power to revise orders of subordinate courts *but not over a superior court.*

10. The others over which this court has the supervisory jurisdiction are *any person, body or authority exercising a judicial or quasi-judicial function.* The High Court does not fall in this category.

11. Clearly the judgment and sentence herein were pronounced by a superior court, this court hence this court is *functus officio* and applicant has recourse in superior court. This would be the Court of Appeal.

12. The Application is therefore declined.

Dated, signed and delivered this 26<sup>th</sup> September 2025.

Mumbua T Matheka

Judge

Applicant Present virtually

CA Chrispol

Mr. Kazungu for state