



**Odongo alias Siaya & another v Republic (Criminal Miscellaneous Application
E237 of 2024) [2025] KEHC 14170 (KLR) (9 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14170 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL MISCELLANEOUS APPLICATION E237 OF 2024**

**A MABEYA, J
OCTOBER 9, 2025**

BETWEEN

ABISAYE ODONGO ALIAS SIAYA 1ST APPLICANT

SYLVESTER OYOO OGADA 2ND APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. On 14/02/2019, Abisaye Odongo alias Siaya and Sylvester Oyoo Ogada were arraigned before the High Court at Kisumu on a charge of murder contrary to section 203 as read with section 204 of the Penal Code, Cap 63 Laws of Kenya. It was alleged that on the night off 14th and 15th January 2019 at Ramogi sub location, Nyakach location within Kisumu County they murdered Kevin Onyango Abuto alias Daddy.
2. After trial, they were found guilty, convicted of the offence and sentenced to 15 years' imprisonment. They filed a Notice of Appeal dated 9/10/2024 but abandoned the same in court on the 24/9/2025.
3. By a Motion on Notice dated 14/11/2024, the applicants have sought reduction of their sentences to take into account the period served in custody.
4. The state opposes the application on the grounds that sentence meted out to the applicants was lawful as the sentencing court took into account section 333(2) of the Criminal Procedure Code in computing the period of their incarceration.
5. Section 333(2) of the Criminal Procedure Code provided that: -

“Subject to the provisions of section 38 of the Penal Code (Cap 63) every sentence shall be deemed to commence from, and to include the whole of the day of, the date on which it



was pronounced, except where otherwise provided in this Code. Provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.”

6. I have considered the entire record. I note that on the 1/10/2024 when sentencing took place, Aburili J. directed that computation of the applicants’ sentence should take into account the period spent in custody from date of arrest until the time they were released on bond.
7. This court’s revisionary jurisdiction is provided for under Section 362-368 of the Criminal Procedure Code.

“362. The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court....

364.

(1) In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may

–

- a) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 354, 357 and 358, and may enhance the sentence;
- b) in the case of any other order other than an order of acquittal, alter or reverse the order.”

8. It is clear from the foregoing that this Court can only exercise revisionary powers over decisions of a subordinate court and not of a Court of concurrent or superior jurisdiction.
9. In *Daniel Otieno Oracha v Republic* (2019) eKLR, the applicant had applied for review of a sentence imposed by a court of concurrent jurisdiction and the Court held that: -

“The law abhors that practice of a judge sitting to review a judgment or decision of another judge of concurrent jurisdiction. Reduction of sentence could only be considered by the Court of Appeal or if this court was sitting on appeal of a judgment of the subordinate court or if the petitioner was seeking for resentence after exhausting appeal mechanisms and not otherwise ... Good governance demands that cases be handled procedurally in the right forum...”

10. Similar positions were held in *Lawrence Kariuki Njeru v Republic* [2017] KEHC 3304 (KLR), in *John Kagunda Kariuki v Republic* [2019] KEHC 5480 (KLR), and recently in *WSC v Republic* (Miscellaneous Criminal Application E013 of 2021) [2025] KEHC 192 (KLR) where the court held that;

“This court has already determined the Applicant’s Appeal and upheld his conviction and sentence. The Court of Appeal thereafter dismissed his Appeal. In as much as this court



empathizes with the plight afflicting the Applicant's family, this court has no jurisdiction to resentence the Applicant."

11. The rule of the thumb is that courts in general cannot sit in review/appeal over decisions of their peers of equal and competent jurisdiction much less those courts higher jurisdiction than themselves. This Court is bereft of jurisdiction to review the said sentence.
12. Accordingly, the application is hereby dismissed for want of jurisdiction. Prison to comply with order of Aburili J of 1/10/2024.

It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 9TH DAY OF OCTOBER, 2025.

A. MABEYA, FCI Arb

JUDGE

