



**Akinyi v Republic (Criminal Miscellaneous Application E096 of 2024)  
[2025] KEHC 15356 (KLR) (29 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15356 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VIHIGA  
CRIMINAL MISCELLANEOUS APPLICATION E096 OF 2024**

**JN KAMAU, J  
OCTOBER 29, 2025**

**BETWEEN**

**ELIZABETH AKINYI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

**Introduction**

1. The Applicant herein was charged with another not before this court with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code Cap 63 (Laws of Kenya). She was convicted and sentenced to fifteen (15) years imprisonment.
2. On 16<sup>th</sup> August 2024, she filed a Notice of Motion application dated 13<sup>th</sup> August 2024 seeking a review of her sentence. She invoked Article 50(2) (q) of *the Constitution* of Kenya, 2010 and pleaded with the court to reduce her sentence to a least severe sentence.
3. She asked this court to consider that she was a first-offender and that her husband was also in prison causing her children to suffer due to lack of support and parental care and love. She sought a non-custodial sentence to take care of her three (3) children on the ground that she was the sole breadwinner and that they were now in a pathetic and vulnerable situation as they were forced to depend on her jobless mother who was uneducated and had to perform hard casual jobs to fend for them.
4. She expressed remorse for having committed the offence and stated that she was reformed and rehabilitated through the theological biblical trainings offered by the spiritual welfare and was hence, a valuable and responsible citizen to the community and the upbringing and modelling of the children. She added that she was sickly and sought for a second chance to re-integrate with the society.



5. She placed reliance on the case of Samson Boyii Nkulet vs Republic [2019]eKLR without highlighting the holding she relied on therein.
6. Her undated Written Submissions were filed on 11<sup>th</sup> February 2025 while those of the Respondent were dated 5<sup>th</sup> March 2025 and filed on 6<sup>th</sup> March 2025. The Ruling herein is based on the said Written Submissions which parties relied upon in their entirety.

### **Legal Analysis**

7. The Applicant submitted that she had been in prison for four (4) years and had been completely reformed, rehabilitated and had maintained good relations with fellow inmates. She regretted having committed the offence and promised to abide by the law if given a non-custodial sentence. She urged the court to allow her application for review herein.
8. On its part, the Respondent invoked Article 165 of *the Constitution* of Kenya and Sections 362 and 364 of the Criminal Procedure Code and argued that the powers of the High Court on review were only to be exercised over subordinate courts.
9. It pointed out that this court did not have jurisdiction to review the decision of a court of concurrent jurisdiction. It added that the moment the court delivered its Judgment although differently constituted it became functus officio over the matter.
10. It was emphatic that superior courts could not review or hear appeals over decisions made by courts of equal and competent jurisdiction or courts higher than themselves. It asserted that the court which ought to deal with an issue arising out of this court was the Court of Appeal as it was the one with jurisdiction under Article 164(3) of *the Constitution* of Kenya and Section 379(1) of the Criminal Procedure Code.
11. It was categorical that this court, therefore, had no jurisdiction to sit on its review or appeal and that the Applicant had not demonstrated that there was new and compelling evidence that had become available to entertain the issue of review of sentence. It added that the Applicant had also not exhausted all avenues since she could approach the Court of Appeal for the orders she was seeking. It argued that Article 50(2)(q) of *the Constitution* of Kenya guaranteed the right of a person convicted to appeal or apply for review by a higher court as prescribed by the law as was held in Daniel Otieno Oracha vs Republic[2019]eKLR. It urged this court to dismiss the Applicant's application herein for lack of merit.
12. Notably, the Applicant was convicted of the offence of murder and was sentenced to fifteen (15) years by P. J. Otieno J. As the said Learned Judge's court was of equal jurisdiction as this court and had already dealt with this matter on issue of sentencing, this court could not purport to sit to review or to deal with an appeal of his said decision.
13. In the premises foregoing, this court lacked the jurisdiction to sit on appeal of its own decision as it was functus officio. The only option that the Applicant had was to lodge an appeal at the Court of Appeal.

### **Disposition**

14. For the foregoing reasons, the upshot of this court's decision was that the Applicant's Notice of Motion application dated 13<sup>th</sup> August 2024 and filed on 16<sup>th</sup> August 2024 was not merited. Her conviction and sentence be and are hereby upheld as they were both safe.
15. It is so ordered.



DATED AND DELIVERED AT VIHIGA THIS 29<sup>TH</sup> DAY OF OCTOBER 2025

J. KAMAU

JUDGE

