



**Murii alias Kayoka v Republic (Criminal Revision E063 of 2024)
[2025] KEHC 14882 (KLR) (15 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14882 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
CRIMINAL REVISION E063 OF 2024
RL KORIR, J
OCTOBER 15, 2025**

BETWEEN

JOHN GITONGA MURII ALIAS KAYOKA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant John Gitonga Murii alias Kayoka was the Accused in Chuka High Court Criminal Case No. E021 of 2021 where he was charged with the offence of murder contrary to Section 203 as read with section 204 of the Penal Code. The particulars of the offence were that he unlawfully murdered one Bernard Kimathi at Karunduni village Thiiti Location Tharaka North Sub-County within Tharaka Nithi County.
2. After successfully plea bargaining his charge, the Accused was convicted of the lesser charge of manslaughter contrary to section 202 as read with Section 205 of the Penal Code. He was sentenced to serve 14 years' imprisonment by Gitari J. In passing sentence dated 22nd September, 2022, Gitari J. noted that the Accused did not offer any serious mitigation and also further that the Accused's action was pre-meditated and he deserved a deterrent sentence.
3. The Applicant has now approached this court to review his sentence.
4. In his home-made Application dated 9th September, 2024, the Applicant set out the basis for his quest for sentence re-hearing reproduced verbatim as follows:-
 - i. That the Applicant was a first offender hence qualified for the least severe punishment under Article 50(2) (p) of *the Constitution*.
 - ii. That the Applicant herein is fully reformed and rehabilitated for he has served almost a third of the imposed sentence.



- iii. That may this honourable court be pleased to consider the Applicant's conduct through application of Section 216 and 329 of the Criminal Procedure Code thus to inform itself as to the proper order to pass.
 - iv. That may this honorable court be pleased to consider that the Applicant has no intention to commit the offence and he is remorseful and regretful.
 - v. That may this honourable court be pleased to appreciate that the Applicant is ready and willing to serve the remaining part of the sentence through Community Service Order.
 - vi. That the Applicant is single parent since the wife ran away leaving him with the children hence after his arrest the children were left with no one to care for them.
 - vii. That the Applicant is completely reformed following the suffering and experience he has gone through while in prison and swear never to indulge himself in crime of any kind.
 - viii. That may this honourable court be pleased to review/revise the Applicant's sentence downwards taking into account the provisions of Section 216 and 329 of the Criminal Procedure Code.
5. Both parties filed Submissions. In his undated Submissions, the Applicant stated that this court had jurisdiction to revise his sentence. That he was a first offender; admitted the offence; was reformed and ready to be a change-maker in the society. He submitted that his wife ran away and leaving the children with no parental care. He prayed to be released to serve the remaining part of his sentence on Community Service Order.
 6. The Applicant further submitted that he pleaded guilty upon plea agreement which precluded him from filing an appeal. That this court should therefore revise his sentence and place him on Community Service Order.
 7. The Application was opposed by the Respondent. They identified one issue for determination, being whether the Petitioner was entitled to a sentence reduction. They submitted that the Applicant was initially charged with the offence of murder which was subsequently reduced to manslaughter. That the sentence of 14 years' imprisonment was legal, just and fair and was arrived at after considering all relevant factors.
 8. The Respondent further submitted that Section 354 of the Criminal Procedure Code granted the High Court powers on revision to increase, reduce or alter the nature of the sentence against the Applicant. They cited part 7:19.2 of the Sentencing Policy Guidelines as providing factors to be considered by court in deciding whether or not to grant a custodial or non-custodial sentence. They urged that the Applicant deserved a custodial sentence and that there were no grounds to review the decision of the trial court.

Analysis and Determination

9. In this case, the Applicant was tried and convicted by Gitari J. a court of equal and concurrent jurisdiction. The sentence delivered on 22nd September 2022 showed that the learned Judge considered the circumstances of case and the mitigation of the Applicant and found that he deserved a deterrent sentence.
10. The Applicant has stated that he plea bargained and that is why he could not appeal. This is a wrong interpretation of the law.

Section 137(L) of the Criminal Procedure Code provides:-



137L.

- “(1) Subject to subsection (2), the sentence passed by a court under this Part shall be final and no appeal shall lie therefrom except as to the extent or legality of the sentence imposed.
- (2) Notwithstanding subsection (1), the Director of Public Prosecutions, in the public interest and the orderly administration of justice, or the accused person, may apply to the court which passed the sentence to have the conviction and sentence procured pursuant to a plea agreement set aside on the grounds of fraud or misrepresentation.
- (3) Where a conviction or sentence has been set aside, under sub section (2), the provisions of section 137J shall apply mutatis mutandis.”

13. It is clear from the above that the Applicant was not precluded from appealing his sentence. It is only the conviction that was final.

14. It is my finding therefore that the Applicant’s recourse was to appeal his sentence to the Court of Appeal. The Application is dismissed.

Orders accordingly.

RULING DELIVERED, DATED AND SIGNED AT CHUKA THIS 15TH DAY OF OCTOBER, 2025.

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R. LAGAT-KORIR

JUDGE

Ruling delivered in the presence of the Applicant acting in person and Ms Rukunga for the State; Muriuki (Court Assistant).

