

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MURANG'A
HIGH COURT CRIMINAL REVIEW NO. E041 OF 2024

LAWRENCE MWANGI
MUGO.....APPLICANT

VERSUS

REPUBLIC.....
RESPONDENT

RULING

1. This review application arises from the original conviction and sentence of the Magistrates court at Murang'a in case number 1053 of 1995. The Applicant was tried and convicted of the offence of robbery with violence contrary to **section 296(2) of the Penal Code**. He was sentenced to 10 years imprisonment on 3rd June 1998 by the trial court.
2. He appealed against this decision to the High Court in Nyeri vide **Criminal Appeal No.136 of 1998** and the same was dismissed and sentence enhanced to death. He then lodged a second appeal at Nyeri Court of Appeal but the same was dismissed. The said death sentence was commuted in 2003 to life imprisonment which he is serving to date.
3. The Applicant applied to this Court through a Chamber Summons Application filed on 4th March 2024 anchored under **Sections 216, 333(2), 329 and 216 of the Criminal Procedure Code** as read together with **Articles 27 and 50(2) of the Constitution of Kenya**.
4. The Applicant heavily relies on the Court of Appeal decision in court of appeal decision in the case of **Kaberia Kahinga and**

others Petition No. 618 of 2010 and on **Yawa Nyale v Republic (2018) eKLR**. The Applicant contends that the court should take into account mitigating factors and the fact that he has reformed in prison while having served a period of close to 30 years.

5. Counsel for the prosecution, Mr. Ndege opposed this application vide oral submissions on 1st July 2025 stating that this court does not have jurisdiction to hear this matter as the Court of Appeal at Nyeri has already considered, determined and dismissed the appeal vide consolidated judgements in Criminal Appeal Nos.117,131 and 133 of 2000. He added that this court is *functus officio* as the appeal of the superior court in Nyeri had also made a determination dismissing the appeal.
6. The submissions by Counsel for the state are factual and are confirmed by the record of the judgement of Court of Appeal in Nyeri dated 17th September 2007. It is evident that the Applicant already exercised his right of Appeal at the High Court Nyeri which enhanced his sentence to life imprisonment. He subsequently exercised his right of appeal at the Court of Appeal Nyeri when the same was dismissed.
7. Counsel submitted that it is beyond this court to review the sentence imposed upon the Applicant by the High Court Nyeri and confirmed by the Court of Appeal.
8. The question for determination is whether this court has jurisdiction to review sentences already confirmed by the Court of Appeal. In the case of **SNA v Republic, Misc Criminal Application No 20 (2024) KEHC**, Judge Terry Odera while sitting at Kisii High Court made reference to the Supreme Court finding in **Raila Odinga v IEBC made** a finding that:

“Similarly, the matter of the sentence meted out was heard and concluded by this Court although differently constituted. Therefore, this Court is functus officio. This court is barred from rehearing the issue of sentencing. I therefore cannot entertain the prayer of granting a lenient sentence or otherwise.”

9. Likewise, I find that this matter having been determined by a court albeit constituted at Nyeri High Court, this court becomes *functus officio* and cannot review the same. Further, the matter has already been determined by the court of Appeal Nyeri. This court therefore has no jurisdiction to review the matter.

10. ***The upshot is that this application is disallowed for lack of jurisdiction by this court.***

**DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 19TH
DAY OF NOVEMBER, 2025.**

**HON. T. W. Ouya
JUDGE**

**For Applicant.....Lawrence Mwangi Mugo (In Person)
For Respondent.....Ms Manyal
COURT ASSISTANT.....Brian**

ORIGINAL