

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT THIKA
HCCREV E126 OF 2024

STEPHEN MWANGI MAINA.....
APPLICANT

VERSUS

PROSECUTION.....
RESPONDENT

RULING

- 1.** The applicant moved this honourable court vide a Notice of Motion application seeking to review the death sentence imposed by the trial court, confirmed by the High Court and later commuted to life imprisonment pursuant to **Article 50 (2) (p) (q) of the Constitution.**
2. The Applicant also seeks to have the period spent in custody computed into the eventual sentence pursuant to the provisions of **Section 333 (2) of the Criminal Procedure Code** and in the event that the balance of years remaining are three years or less, the honourable court be pleased to grant a non-custodial sentence.
- 3.** The application was supported by grounds on the face of it as well as the affidavit of *Stephen Mwangi Maina* of 28th May 2024 where it was deponed that resentencing is available to all convicts pursuant to **paragraph 4.8.14 of the Sentencing Policy guidelines 2023.**
4. The Respondent opposed the Application through the grounds of opposition dated 12th June 2025 on the basis that the court had no jurisdiction to entertain the resentencing application as the same would be tantamount to sitting as an appellate court against its own judgment. The issue of sentence had already been

considered by a court of competent and concurrent jurisdiction to wit, Nairobi High Court vide Appeal no.618 of 2006.

5. The court directed that the application be canvassed through written submissions.
6. The Appellant's submissions were hinged on the fact that the mandatory death sentence for the offence of robbery with violence contrary to **Section 296 (2) of the Penal Code** is unlawful and therefore the applicant is entitled to the least severe sentence.
7. The Respondent on the other hand submitted that the sentence meted by the trial court was both lawful and proper and in any case the sentence had already been canvassed before a court of competent and concurrent jurisdiction. Therefore, this honourable court had no jurisdiction to consider the issue of resentencing.
8. The Respondent therefore urged that the application be dismissed for lack of merit.
9. The main issue that commends itself for determination is whether this court has jurisdiction to determine the instant Application for revision of sentence.
10. The High Court's power of revision is set out in **Article 165 (6) and (7)** of the Constitution which provides:-
(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 over a superior court.

(7)For the purposes of clause (6), the High Court may call for the record of any

proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.

11. A perusal of the pleadings herein shows that the legality of the sentence meted against the Applicant has already been addressed by a court of competent jurisdiction. As a general rule, the High Court can only review the Judgment of a subordinate court as provided for under **sections 362 to 364** of the **Criminal Procedure Code**. This court therefore does not have the jurisdiction to review its own decision. In **John Kagunda Kariuki v Republic (2019) eKLR**, Ngugi J. (as he then was) held that:

“In the present case, the Applicant’s appeal has already been heard by the High Court. He cannot return to the High Court for a review of the sentence imposed. He is at liberty to make an argument for reduced sentence at the Court of Appeal”.

12. In the persuasive decision of **Daniel Otieno Oracha v Republic (2019) eKLR**, the Petitioner had applied for review of a sentence imposed by a court of concurrent jurisdiction and Aburili J. 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.....

The judgment of Abida Ali-Aroni J made in accordance with the law has not been challenged. This court cannot sit on appeal of its own judgment or of court of concurrent competent jurisdiction when the Petitioner had an opportunity to ventilate his grievance before the Court of Appeal even if it was to challenge sentence alone.

Good governance demands that cases be handled procedurally in the right forum. This is because the rule of the thumb that superior courts cannot sit in review/appeal over decisions of their peers of equal and competent jurisdiction much less those courts higher than themselves and that matters falling under the exclusive jurisdiction of Supreme Court under Article 163(3) cannot be dealt with by the High Court.....”

13. This court, differently constituted, which is a court of concurrent jurisdiction has already upheld the Applicant’s sentence. Any further recourse that the Applicant has in regards to his sentence lies in the Court of Appeal and not in this court.

14. In the end, I find that this court has no jurisdiction to review the Judgement of a court of concurrent jurisdiction and therefore the Application herein lacks merit.

15. *The Application is dismissed.*

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 27TH DAY OF NOVEMBER, 2025.

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

**For Applicant.....Stephen Mwangi Maina(Present at
Manyani Maximum Prison.)
For Respondent.....Kagema for the state
COURT ASSISTANT.....Brian**

ORIGINAL