

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT THIKA
HIGH COURT CRIMINAL REVISION NO. E127 OF 2024

**PATRICK
MWAMBA.....APPLICANT**

MWANGI

VERSUS

**REPUBLIC.....
.....RESPONDENT**

RULING

1. By a Chamber Summons Application dated 26th June 2024 the Applicant moved this honourable court seeking this honourable court to exercise its revisionary powers to order that the sentence meted against the Applicant to confirm to **Section 333 (2) of the Criminal Procedure Code**.
2. The application was brought on grounds that the applicant had been arrested on 3rd April 2013 and sentenced to death on 22nd December 2015.
3. The appellant dissatisfied with the decision of the trial court and unsuccessfully appealed to the High Court at Kiambu vide **CR. Appeal NO. 157 of 2017**. He further appealed in the Court of Appeal at Nairobi and the same was also dismissed. However, the death sentence was substituted with a period of 20 years imprisonment.
4. The applicant has therefore moved this honorable court seeking that the period spent in custody prior to sentencing ought to have been taken into account when computing the sentence period.
5. The application was opposed by the Respondent through the Grounds of Opposition dated 30th July 2025, on the

basis that this honorable court lacks jurisdiction to entertain the revision since the matter has already been addressed by a court of competent jurisdiction as well as the Court of Appeal.

6. The court directed that the Application be canvassed through written submissions.
7. The applicant submitted that he ought to benefit from the provisions of **Section 333 (2) of the Criminal Procedure Code**. This was in line with the right to benefit from the least severe sentence available in law. Reliance was placed on the case of **Ahamad Abolfathi Mohammed and another versus Republic [2018]eKLR**
8. The respondent submitted that the issue of sentence had already been addressed by a court of competent jurisdiction and by the Court of Appeal. The Application is therefore without merit and ought to be dismissed.
9. The main issue that commends itself for determination is whether this court has jurisdiction to determine the instant case.
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 not 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 differently constituted as well as the Court of Appeal. In fact, the Court of Appeal in reducing the Applicant's death sentence to twenty (20) years imprisonment in ***Patrick Mwangi Mwamba v Republic [2020] KECA 716 (KLR)*** remarked thus:

“Accordingly, we note that the appellant was a 1st offender. In mitigation, he asked the court to take into consideration that he had no family of his own; that he is young and the fact that he was helping his parents. Taking into account the said mitigation and in view of the Supreme Court decision of Francis Muruatetu (supra), we set aside the death sentence and substitute it with a sentence of twenty (20) years imprisonment from the date of conviction (22nd December, 2015).”

12. Flowing from the above, it is evident that the question of **Section 333 (2)** had already been considered and addressed by a court of competent jurisdiction. This court does not have jurisdiction to exercise revisionary powers over the decisions of the Court of Appeal.

13. The doctrine of stare decisis is to the effect that the decisions of the Court of Appeal are binding on this court. Therefore, this court does not have jurisdiction to review the decision of the Court of Appeal.

14. The Supreme Court in ***Republic v Mwangi; Initiative for Strategic Litigation in Africa (ISLA) & 3 others (Amicus Curiae) [2024] KESC 34 (KLR)*** when

confronted with the applicability of the doctrine of *stare decisis* stated thus:

54.As we have stated before in several cases, unlike in other jurisdictions, Kenya's stare decisis principle is a constitutional obligation meant to enhance the legal system's predictability and certainty. In the case of Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others, SC Petition No 2B of 2014 [2014] eKLR, we stated that article 163(7) of the Constitution is the embodiment of the time-hallowed common law doctrine of stare decisis. It holds that the precedents set by this court are binding on all other courts in the land. It is imperative for all courts bound by decisions to rigorously uphold their authority, ensuring the effective functioning of the administration of justice. Without this steadfast and uniform commitment, the legal system risks ambiguity, eroding public trust, and causing disorder in the administration of justice.

15. From the foregoing, it is evident that this honourable court does not have the jurisdiction to entertain the instant application.

16. Consequently, I find no merit in this Application and I hereby dismiss it.

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

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

**For Applicant.....Patrick Mwangi Mwamba (Present at
Kamiti Medium Prison)
For Respondent.....Kagama HB Ms Torosi for the state
COURT ASSISTANT.....Brian**

ORIGINAL