



REPUBLIC OF KENYA



KENYA LAW
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**Gichana v Director of Public Prosecutions (Criminal Miscellaneous Application
E049 of 2025) [2026] KEHC 741 (KLR) (29 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 741 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
CRIMINAL MISCELLANEOUS APPLICATION E049 OF 2025**

**TW CHERERE, J
JANUARY 29, 2026**

BETWEEN

SAMSON OCHONGA GICHANA APPLICANT

AND

DIRECTOR OF PUBLIC PROSECUTIONS RESPONDENT

RULING

1. The Applicant, Samson Ochonga Gichana, moved this Court by a Notice of Motion dated 2024, seeking re-hearing and reduction of sentence under, inter alia, Articles 22, 23, 50(2)(p), 159 and 165(3) of *the Constitution*, the Sentencing Policy Guidelines, and section 333(2) of the Criminal Procedure Code. The application relates to his conviction in Nyamira HCCR 28 of 2015.
2. The record shows that following a full trial, the Applicant together with two others, was convicted of the offence of murder and sentenced to thirty (30) years' imprisonment on 21st February 2019 in Republic v Samson Onchong'a Gichana & 2 Others [2019] eKLR, High Court Criminal Case No. 28 of 2015 (Nyamira).
3. The Applicant appealed against both conviction and sentence, but the appeal was dismissed on 07th FEBRUARY, 2025 by the Court of Appeal in Gichana & 2 others v Republic (Criminal Appeal 57 of 2019) [2025] KECA 179 (KLR) (7 February 2025) (Judgment) thereby affirming the sentence imposed by the High Court.
4. The Respondent opposed the application and raised a jurisdictional objection on the ground that this Court is functus officio, the conviction and sentence having been conclusively determined by the High Court and affirmed on appeal by the Court of Appeal.
5. I have considered the Notice of Motion, the supporting affidavit, and the nature of the reliefs sought. The application plainly invites this Court to reopen and vary a sentence that has already been confirmed



by the Court of Appeal. It does not seek correction of an accidental slip or enforcement of an existing order, but a substantive reconsideration of sentence on grounds of leniency and rehabilitation.

6. Once a final judgment has been rendered and affirmed on appeal, the doctrine of *functus officio* bars the court from re-engaging with the merits of that decision. Upon dismissal of the appeal, the judgment of the High Court merged into that of the Court of Appeal, and this Court was divested of jurisdiction to revisit the sentence. The provisions relied upon by the Applicant, including section 333(2) of the Criminal Procedure Code, do not confer jurisdiction upon this Court to re-hear or reduce a sentence already affirmed on appeal.
7. In the circumstances, this Court finds that it lacks jurisdiction to entertain the application.
8. Accordingly, the Applicant's undated Notice of Motion is disallowed and is hereby dismissed for want of jurisdiction.

DELIVERED AT NYAMIRA THIS 29TH DAY OF JANUARY 2026

WAMAE.T. W. CHERERE

JUDGE

Appearances

Court Assistant - Terer

Applicant - Present

For the DPP - Mr. Chirchir (SADPP)

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