



**Magoma v Republic (Criminal Revision E043 of 2025)
[2026] KEHC 740 (KLR) (21 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 740 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
CRIMINAL REVISION E043 OF 2025
TW CHERERE, J
JANUARY 21, 2026**

BETWEEN

FRED ONDIEKI MAGOMA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Court is seized of an undated Notice of Motion in which the Applicant urges the Court to revisit the sentence he is currently serving following his conviction for the offence of robbery with violence contrary to section 296(2) of the Penal Code.
2. The procedural history of the matter is not contested. The Applicant was tried and convicted by the Senior Resident Magistrate's Court at Keroka in Criminal Case No. 273 of 2006 and sentenced to death. His appeal to the High Court at Kisii in High Court Criminal Appeal No. 156 of 2006 was unsuccessful. On further appeal, the Court of Appeal in Criminal Appeal No. 20 of 2008 (Kisumu) affirmed the conviction, set aside the death sentence, and substituted it with a sentence of life imprisonment, which the Applicant continues to serve.
3. Thereafter, the Applicant invoked this Court's jurisdiction through Nyamira High Court Criminal Revision No. HCCRREV E090 of 2024, seeking re-sentencing premised on the jurisprudence in Francis Karioko Muruatetu & another v Republic. Upon consideration, the Court declined the invitation, finding that it lacked jurisdiction to interfere with a sentence imposed by the Court of Appeal.
4. The application presently before the Court seeks, in substance, to achieve the same outcome. Notwithstanding the different procedural vehicle employed, the relief sought remains the re-opening of sentencing already conclusively determined by a superior court and previously declined by this Court.



6. The limits of this Court's jurisdiction are well settled. The High Court has no mandate to review, vary, or re-sentence where the sentence in question was imposed by the Court of Appeal. It neither exercises appellate authority over, nor supervisory jurisdiction in respect of, a superior court of record.
6. Following the pronouncement of the Court of Appeal on sentence, and this Court's subsequent refusal to entertain re-sentencing in HCCRREV E090 of 2024, the issue was brought to finality. The Court is therefore functus officio.
6. Viewed in its proper context, the present application constitutes an impermissible attempt to re-agitate a matter already determined with finality. The mere re-articulation of grounds previously rejected does not vest this Court with jurisdiction and amounts to an abuse of the court process, contrary to the principle that litigation must come to an end.
6. In the result, the Court finds that:
 1. It lacks jurisdiction to entertain the application
 2. The application amounts to an abuse of the court process
 3. The application is dismissed.

DELIVERED AT NYAMIRA THIS 21ST DAY OF JANUARY 2026

WAMAE. T. W. CHERERE

JUDGE

Appearances

Court Assistant - Hilda

Applicant - Present in person

For the DPP - Mr. Chirchir (SADPP)

