

RULING
HCCRCMISC E015 OF 2025



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYAMIRA
(CHERERE-J)
HCCRCMISC E015 OF 2025

BETWEEN
GEOFFREY ONUONGA ONGERA.....
APPLICANT
AND
DIRECTOR OF PUBLIC PROSECUTIONS.....
RESPONDENT

RULING

1. The Applicant, Geoffrey Onuonga Ongera, moved this Court by a Notice of Motion dated 20th February 2025, 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)**.

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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, raising a jurisdictional objection on the ground that this Court is *functus officio*, the conviction and sentence having been finally determined by the High Court and subsequently affirmed 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 on appeal. It does not seek the correction of an accidental slip, clarification, or enforcement of an existing order, but rather a substantive reconsideration of sentence on grounds of leniency and post-conviction 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

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of the Court of Appeal, thereby divesting this Court 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, vary, or reduce a sentence that has already been affirmed on appeal.

7. Accordingly, the Applicant's undated Notice of Motion is disallowed and is hereby dismissed for want of jurisdiction.

DELIVERED AT NYAMIRA THIS 22nd DAY OF January 2026



WAMAE.T. W. CHERERE
JUDGE

Appearances

Court Assistant - Hilda

Applicant - Present

For the DPP - Mr. Chirchir (SADPP)
