



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU
MISCELLANEOUS CRIMINAL APPLICATION NO.
E113 OF 2024

SIMON NJUGUNA RIMUI.....

APPLICANT

-VERSUS-

REPUBLIC

RESPONDENT

RULING

1. The Applicant prays for invocation of the Provisions of **Section 333(2) of the Criminal Procedure Code** among other relevant laws in his sentencing so that the period he was in remand custody awaiting trial is taken into account. A formal

Application by which the relief is sought does not appear to have been filed. What is on record is a “Supporting Affidavit” purportedly sworn by the Applicant in this regard.

2. The Prosecution Counsel (Mr Daniel Wakasyaka) opposes the Application pointing out that this court in a similar re-sentencing Application in Miscellaneous File (Consolidated) No. 82, 89 and 90 of 2019 had reviewed the Applicant’s previous sentence of death and substituted it for 20 (twenty) years imprisonment after taking into account a period of 7 months the Applicant was in remand custody pending trial. Counsel is therefore of the view that I have no jurisdiction to vary the sentence in the circumstances.
3. The Applicant chose not to make submissions.
4. Indeed this Court presided over by my sister (Hon. Justice Mumbua T. Matheka) had convicted and sentenced the Applicant to 5 (five) years imprisonment for the offence of **Murder**

contrary to section 203 as read with section 204 of the Penal Code, in Criminal Case File No. 60 of 2010. The particulars of the Murder information were that on 5th June 2010 at Kisumu Ndogo Village, Leleshwa Location, of the then Kipipiri District, Central Province, the Applicant jointly with others murdered Ann Wanjiku Murugani.. He had denied the charge.

5. As to whether or not **Section 333 (2) of the Criminal Procedure Code** was complied with, the issue is now moot. A court of concurrent jurisdiction has pronounced itself and gave the Applicant the credit he still craves. Interfering with a decision of a court of concurrent jurisdiction offends the well established doctrine of *stare decisis* which is frowned upon.
6. The Application is therefore dismissed as lacking in merit.

J. M. NANG'EA, JUDGE.

Ruling delivered this 10th day of March , 2026.

In the presence of:

Mr Wakasyaka for the DPP.

The Applicant.

The Court Assistant (Jeniffer).

J. M. NANG'EA, JUDGE.

Original