



REPUBLIC OF KENYA



**Mutiria v Republic (Miscellaneous Criminal Application  
E071 of 2025) [2026] KEHC 2373 (KLR) (26 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 2373 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT CHUKA  
MISCELLANEOUS CRIMINAL APPLICATION E071 OF 2025**

**RL KORIR, J**

**FEBRUARY 26, 2026**

**BETWEEN**

**ERICK MUTUGI MUTIRIA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Erick Mutugi Mutiria (Applicant) was charged in High Court Criminal Case No. 19 of 2019 with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. He denied the charge and the case went to full trial.
2. In a judgement dated 5<sup>th</sup> April 2024, Gitari J convicted him as charged.
3. The trial court subsequently held a sentencing hearing in which parties were heard in mitigation and a pre-sentence report received.
4. In a considered ruling issued on 30<sup>th</sup> May 2024, Gitari J. sentenced the Applicant to serve 30 years imprisonment.
5. The Applicant has now approached this court (differently constituted) to revise his sentence. The supporting affidavit by his advocate Kirimi Muturi (now deceased) was sworn on 8<sup>th</sup> November 2024. Counsel stated that the time the Applicant spent in pre-trial custody was not considered; that the Applicant was undergoing severe hardship in prison and that it was just for him to be granted a shorter sentence. He stated further that this court had jurisdiction to grant the revision orders sought.
6. In submissions dated 23<sup>rd</sup> September 2025, the Applicant's Counsel Waklaw Advocates cited the case of Bethwel Wilson Kibor [2009] eKLR and Ahamed Abolfathi Mohammed and Another -v- Republic [2018] KECA 743 (KLR) to support the proposition that time spent in pre-trial custody should be



taken into consideration the overall sentence be proportionally reduced. They urged that the period spent in custody be taken into account.

7. The Application was opposed by the Respondent through written submissions dated 22<sup>nd</sup> July 2025. The Respondent submitted that the sentence meted out was legal, just and fair and that the trial court took into consideration all circumstances while meting out sentence.

8. The legal issue before me is whether this court can revise the sentence issued by a court of equal and concurrent jurisdiction. This issue arises clearly because the revisionary jurisdiction is over subordinate courts and tribunal. This court's revisionary jurisdiction is provided under Section 362 of the Criminal Procedure Code (CPC) which provides

“362. The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.”

9. It is clear from Section 362 of the Criminal Procedure Code that the power of revision is to be exercised by the High Court over the Subordinate Court.

10. The sentence in this case was meted out by Gitari J. a judge of equal and concurrent jurisdiction. The Applicant cannot therefore return to this court for revision of a sentence meted out by the same court.

11. In Moses Dola vs. Republic [2021] KEHC 6180 (KLR) Lesiit J. (as she then was) held as follows:-

“The law is clear that the period a person was held in custody prior to being sentenced shall be taken into account. The sentence in this case was imposed by Lagat-Korir, J, a court of parallel jurisdiction, which was the trial court in this matter. That means that if the Applicant was aggrieved in the manner in which the period he spent in custody before sentence was considered, or not, his recourse is not before this court. His grievance should be addressed on appeal before the Court of Appeal.

He cannot return back to this same court to consider his grievance, for two reasons. First and most, it is this court which passed the impugned sentence. Having delivered itself on the matter, this court is functus officio. Secondly, the grievance he now has should be a ground of appeal which can only be considered on appeal before the Court of Appeal.”

11. I am further persuaded by the case of Daniel Otieno Oracha vs Republic (2019) eKLR, where Aburili J. held that:-

“The law abhors that practice of a Judge sitting to review a judgement or decision of another Judge of concurrent jurisdiction. Reduction of sentence could only be considered by the Court of Appeal or if this court was sitting on appeal of a judgment of the subordinate court or if the Petitioner was seeking for resentence after exhausting appeal mechanisms and not otherwise....

The Judgment of Abida Ali-Aroni J. made in accordance with the law has not been challenged. This court cannot sit on appeal of its own Judgement or of court of concurrent competent jurisdiction when the Petitioner had an opportunity to ventilate his grievance before the Court of Appeal even if it was to challenge sentence alone.



Good governance demands that cases be handled procedurally in the right forum. This is because the rule of the thumb that superior courts cannot sit in review appeal over decisions of their peers of equal and competent jurisdiction much less those courts higher than themselves and that matter falling under the exclusive jurisdiction of Supreme Court under Article 163(3) cannot be dealt with by the High court.....”

12. The Applicant was sentenced to 30 years’ imprisonment. In his view this was a harsh and excessive sentence. The right recourse for him was, and remains the Court of Appeal.
13. Having found that the revision was not properly before me, I decline the invitation to consider the merits or demerits of the sentence.
14. The Application is struck out. The Applicant’s recourse as I have stated above, lies in the Court of Appeal.

Orders accordingly.

**RULING DELIVERED, DATED AND SIGNED AT CHUKA THIS 26<sup>TH</sup> DAY OF FEBRUARY, 2026.**

.....

**R. LAGAT - KORIR**

**JUDGE**

Ruling delivered in the presence of Mr. Wakoko for the Applicant, Ms Rukunga for the Republic; Muriuki (Court Assistant)

