



**Onyancha v Republic (Criminal Miscellaneous Application
E005 of 2025) [2026] KEHC 2715 (KLR) (11 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 2715 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
CRIMINAL MISCELLANEOUS APPLICATION E005 OF 2025**

TW CHERERE, J

FEBRUARY 11, 2026

BETWEEN

MICHAEL KEMOSI ONYANCHA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant has moved this Court by Notice of Motion dated 20th January 2026 seeking, inter alia, that this Court invokes section 333(2) of the Criminal Procedure Code and factors in the period spent in remand custody in his sentence
2. From the supporting affidavit, the Applicant depones that he was charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code in Criminal Case No. 9 of 2015 at Nyamira High Court, convicted and sentenced to thirty (30) years' imprisonment. He further states that his appeal to the Court of Appeal at Kisumu in Criminal Appeal No. 92 of 2019 was dismissed
3. The record therefore shows that both conviction and sentence were subjected to appellate scrutiny by the Court of Appeal, which rendered its judgment and upheld the decision of the High Court.
4. The issue for determination is whether this Court has jurisdiction to entertain the present application in light of the decision of the Court of Appeal.
5. Under Article 164(3) of *the Constitution*, the Court of Appeal exercises appellate jurisdiction over decisions of the High Court. By virtue of Article 163(7), all courts other than the Supreme Court are bound by the decisions of superior courts.
6. Once the Court of Appeal heard and determined Criminal Appeal No. 92 of 2019 and affirmed the sentence, the matter ceased to be within the jurisdiction of this Court. The High Court cannot purport to review, vary, or interfere with a sentence that has been considered and upheld by the Court of Appeal.



7. To entertain the present application would amount to this Court sitting on appeal over the decision of the Court of Appeal. That is constitutionally impermissible. The hierarchical structure of the courts does not permit a lower court to revisit or alter a decision of a superior court.
8. The doctrine of functus officio equally applies. Upon determination of the appeal by the Court of Appeal, this Court became devoid of jurisdiction in respect of the issues conclusively settled therein.
9. If the Applicant is aggrieved by the decision of the Court of Appeal, his recourse lies only before the Supreme Court, subject to *the Constitution* and the law, and not before this Court.
10. Accordingly, I find that this Court lacks jurisdiction to entertain the Notice of Motion dated 20th January 2026. The same is hereby struck out.

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DELIVERED AT NYAMIRA THIS 11TH DAY OF FEBRUARY 2026.

WAMAE.T. W. CHERERE

JUDGE

Appearances

Court Assistant - Anita

Applicant - Present

For the DPP - Mr. Chirchir (SADPP)

