

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT CHUKA
CRIMINAL REVISION NO. E014 OF 2025

ROSELINE KAITHI MUTIIRA

.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

R U L I N G

1. The Applicant, Roseline Kaithi Mutiira filed the present Application for sentence revision and sought orders *inter alia* that she be granted a non-custodial sentence or in the alternative that her sentence be reduced to the period she has served.

2. The Application is based on the grounds that she was convicted alongside her daughter; that at the time of arrest she was taking care of her 7 grandchildren; that her spouse who took over the caregiving role when sickly and needy had now

passed on and the said children were now in the care of a helpless and needy neighbour.

3. The Applicant further stated that she had undergone sufficient rehabilitation in prison and had acquired skills in tailoring and embroidery.

4. At the hearing of the Application on 21st July 2025, the Applicant submitted that she had not filed an appeal and her prayer was for a reduced sentence as her children then aged 15, 17 and 18 years were suffering. That her other children were independent. She clarified that she was now 55 and not 60 years old as she had stated earlier.

5. The Respondent filed written submissions dated 17th July 2025. According to the Respondent, the issue was whether the Petitioner was entitled to a sentence reduction.

6. They submitted that the sentence meted out to the Applicant was legal, fair and just as the learned trial Judge considered all the relevant factors and arrived at a proper sentence in the circumstances. That the Applicant was sentenced to serve 25 years' imprisonment for the offence of murder which carried a maximum death penalty under section 204 of the Penal Code.
7. On the Applicant's prayer for a non- custodial sentence, the Respondent submitted that the seriousness of the offence warranted a custodial sentence.
8. The Respondent urged the court to disallow the Application on grounds that it was not merited.
9. Section 362 provides:

“ 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.”

11. In this case the Applicant was tried, convicted and sentenced by the High Court. In sentencing the Applicant and her co-accused, the court stated: -

“I have noted that the Accused are first offenders. I have also considered the mitigation. I however note that this offence is very serious and as rightly pointed out carried a maximum sentence of death.

As I have stated, the Accused subjected the deceased to a most painful and undeserved death. This trend of punishing people by putting them to death while taking the law in their own hands must be condemned in the strongest possible words and must be discouraged. Having considered all these, I sentence each Accused to serve twenty five (25) years imprisonment. The sentence to run from 17th September, 2018 when they were remanded in custody to await trial. Right of Appeal 14 days.”

12. As submitted by the Respondent, the court considered the circumstances of the case.

13. The Applicant was not sentenced to suffer death. Her case therefore did not fall into the category of cases where the Supreme Court in

Francis Karioko Muruatetu & another v

Republic [2017] eKLR directed this court to under take a sentencing hearing, take mitigation and re-sentence bearing in mind that the death sentence was no longer a mandatory sentence.

14. Further, the court that sentenced the Applicant was a court of parallel and concurrent jurisdiction. I hold the view that in the hierarchy of courts, I am not mandated to revise the sentence meted out by a Judge of equal and concurrent jurisdiction.

15. I am persuaded by the case of **Moses Dola vs. Republic [2021] KEHC 6180 (KLR)** where Lesiit J. (as she then was) held:-

“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.”

16. 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.....”

17. In the end, the Application has no merit and is dismissed.

Orders accordingly,

**Ruling delivered, dated and signed at Chuka
this 19th day of March, 2026.**

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**R. LAGAT - KORIR
JUDGE**

**Ruling delivered in the presence of Applicant
acting in person; Ms Rukunga for the Republic.
Muluvi (Court Assistant)**