

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT ELDORET**  
**CRIMINAL PETITION NO. E014 OF 2024**

**LABAN WEKESA WANYAMA .....**  
**PETITIONER**

**=VERSUS=**

**REPUBLIC .....**  
**RESPONDENT**

**Coram: Justice R. Nyakundi**  
**Ms Sidi for State**

**RULING**

1. Before Court is a notice of motion dated 15<sup>th</sup> January 2024 expressed to have been brought under Articles 379(4), 356, & 357 Cap 75, 165(3) (a) & (b), 50(2) (q), 27, 28, 326 and 216 of the CPC and any other enabling laws. The Petitioner is seeking for the following orders:
  - (a) That the Petitioner is seeking for sentence review in accordance to Article 50(2) (p) (q) and Section 362 & 364 of the Constitution of Kenya 2020.
  - (b) That this matter is certified urgent and be heard at the first instance.
  - (c) That the Applicant will be seeking a declaration by the Court that his application has merits and qualifies to be heard.
2. Which application is grounded on the following grounds:
  - (a) That I am a first offender and thus beg for leniency.
  - (b) That I am remorseful, repentant and reformed since I have learnt incarceration in prison to take responsibility of my own actions.
  - (c) That the sentence meted upon me was too harsh considering my mitigating factors and circumstances.

- (d) That more grounds to be adduced at hearing thereof and determination of this petition.
3. The application is supported by an affidavit sworn by the Petitioner who deposes as hereunder:
- (a) That I was charged with the offence of murder contrary to Section 203 as read with 204 and sentenced to death.
- (b) That I appealed to the Court of appeal vide No. 53 of 2017 and the death sentence was reduced to 20 years imprisonment on 6<sup>th</sup> March 2019.
- (c) That the sentence meted upon me is harsh and excessive against my mitigation.
- (d) That I am now approaching this honourable court to kindly review my 20 years sentence to a lesser and more lenient sentence.
- (e) That this honorable court has competent, unlimited jurisdiction to hear and determine this application under the provisions of Article 165(3)(b) of the Constitution of Kenya 2010.
- (f) That I am remorseful, repentant, reformed and rehabilitated, as I have learned hard lessons while in custody and now beg for leniency.
- (g) That I do beg that I be accorded to benefit with the provision of Article 50(2)(q) of the Constitution of Kenya 2010.
- (h) That it's humble prayer that I be granted a fair opportunity to argue my petition.

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### **Decision**

4. This application is misplaced for Wananda J on 15<sup>th</sup> December 2023 ruled as follows:

*"In the premises, the Petition (Application dated 26/052019) is dismissed in its entirety as this Court lacks the jurisdiction to*

*revisit or reopen a matters already determined by the Court of Appeal, a higher court in the hierarchy of Courts.”*

5. In essence, the application is res judicata and is therefore dismissed for want of *personam* and *res* on the subject matter placed before this court for consideration. The best remedy is for the Applicant to follow-up with the orders issued by Wananda J for I cannot sit on appeal being a Court of concurrent jurisdiction.

**GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 9<sup>TH</sup> DAY  
OF APRIL, 2026**

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**R. NYAKUNDI  
JUDGE**