



**Kiria v Republic (Miscellaneous Criminal Application
E038 of 2025) [2026] KEHC 5447 (KLR) (28 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 5447 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
MISCELLANEOUS CRIMINAL APPLICATION E038 OF 2025**

**RL KORIR, J
APRIL 28, 2026**

BETWEEN

PETER KIRIMI KIRIA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Peter Kirimi Kiria (Applicant) was charged with the offence of murder contrary to section 202 as read with section 203 of the Penal Code. He was alleged to have unlawfully killed Julius Mohamed Karamu at Karocho Sub-Location, Karocho Location, Tharaka South Sub-County, within Tharaka Nithi County on the 12th day of July 2020.
2. At the conclusion of the trial, he was convicted and sentenced on 9th March, 2023 to serve 22 years' imprisonment by Gitari J.
3. In sentencing the accused, the court stated:-

“I have considered that the accused is a 1st offender and the mitigation and I will therefore pass a sentence to discourage the offence. I sentence accused to serve twenty two (22) years imprisonment. The sentence will be reduced by two (2) years and one month the period the accused spent in remand awaiting trial in line with section 333(2) of the Criminal procedure Code.

Right of Appeal 14 days.”

4. The Applicant has now made the present application to this court to have his prison sentence reviewed and varied for him to serve a probationary sentence for the remainder of his term.
5. The Applicant stated that he had filed an appeal to the court of appeal but the appeal had not taken off.



6. In submissions dated 28th July 2025, the Applicant stated that he was remorseful, a first offender a family man and had undergone adequate rehabilitation. That he was ready to join the community as productive member of society.
7. The Applicant further submitted that his children were suffering as his wife had taken off upon his incarceration. He prayed for leniency asking to be placed in probation in order to take care of his children.
8. The Application was opposed by the Respondents. In submissions dated 14th July, 2025 the Respondents submitted that the sentence meted out against the Applicant was legal, just and fair. They referred to the Judiciary Sentencing Guideline 2023 stating that the sentence was both retributive and deterrent. They further submitted that the sentence was already lenient in view of the seriousness of the offence.
9. On the whether the Applicant could serve a non-custodial sentence, the Respondent urged the court to consider the seriousness of the offence.
10. The revisionary jurisdiction of this court is provided under Section 362 of the Criminal Procedure Code which provides as follows:-

“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.”

11. In this case the Applicant was charged with the offence of murder contrary to section 202 as read with section 203 of the Penal Code. He was tried and convicted in this court by Gitari J. This court does not deem it proper to revise a sentence meted by a Judge of equal and concurrent jurisdiction as that would amount to sitting on appeal on the sentence. It is my view that the proper forum for the Applicant to ventilate any issues on his sentence was the Court of Appeal.
12. I am 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.....”



13. I have nonetheless looked at the prayer for anon-custodial sentence. Considering the seriousness of the offence, such sentence would not be readily available to the Applicant, considering that he has served only 3 years of the 20 year sentence.

14. It is my finding that the Application has no merit. It is dismissed.

RULING DELIVERED, DATED AND SIGNED AT CHUKA THIS 28TH DAY OF APRIL, 2026.

.....

R. LAGAT-KORIR

JUDGE

Ruling delivered in the presence of the Applicant acting in person and Ms Rukunga for the State; Muriuki (Court Assistant).

