



**Engasia v Republic (Miscellaneous Criminal Application
E048 of 2025) [2026] KEHC 6168 (KLR) (11 May 2026) (Ruling)**

Neutral citation: [2026] KEHC 6168 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
MISCELLANEOUS CRIMINAL APPLICATION E048 OF 2025
RN NYAKUNDI, J
MAY 11, 2026**

BETWEEN

NELSON LUYANGA ENGASIA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. What is pending before this Honourable Court for determination is a notice of Motion Application dated 25th August 2025 and filed on 9th September 2025 in which the Applicant is seeking the following orders: -
 - a. Spent
 - b. That this application is for sentence reduction.
2. The Application is made on the following grounds on the face of it among others: -
 - a. That the Applicant is not contesting his conviction or challenging the sentence of 25 years' imprisonment but prays for sentence reduction.
 - b. That may this Honourable Court be pleased to exercise criminal revision jurisdiction.
 - c. That this Honourable Court consider his mitigation as part of the sentence.
 - d. That the Applicant is remorseful and repentant and that he entreats this Honourable Court to exercise leniency and reduction of the sentence be allowed.
 - e. That the Applicant was a sole bread winner of his family of school going children who have since dropped out of school and risk becoming destitute due to his incarceration.



- f. That the Applicant is a first offender and total orphan and a law abiding citizen and do hereby request this Court to consider reducing the sentence on humanitarian grounds.
 - g. That the Applicant do earnestly and honestly feel remorseful for the offence which has resulted to substantial depravity to his young brothers and sisters who are depending on his octogenarian grandparents as well as other dependants in the family.
 - h. That the Applicant's family is very poor and he had been the sole breadwinner to the family and the prolonged sentence subjects them to severe suffering hence request for a reduction of the sentence.
 - i. That he is currently aged 39 years and left behind a wife and two children and that he was sentenced to serve 25 years hence praying for leniency so that he can use the remaining period to serve his family.
 - j. That his wife abandoned his children after his incarceration who are helpless and scattered.
 - k. That the Applicant does not intend to appeal to the Court of Appeal to Court of Appeal.
3. The Application was supported by an annexed affidavit dated 25th August 2025 in which the Applicant deponed as follows: -
- a. That I was convicted of the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code and was sentenced to twenty-five (25) years imprisonment.
 - b. That I did not admit further to the Court of Appeal hence I have no pending Appeal and I do not intend to appeal to the Court of Appeal.
 - c. That in respect of this application, I humbly approach this Honourable Court seeking its intervention in sentence reduction only in exercise of its revision jurisdiction opined in paragraph 50(e) and (f) of the Supreme Court Ruling in application No 2 of 2011.
 - d. That may this Honourable Court be pleased to reduce my sentence downwards the same with the most lenient sentence that have been awarded.
4. The Application was canvassed by way of written submissions.

Applicant Written Submissions

5. The Applicant filed his Written Submissions dated 5th December 2025. The Applicant invoked Section 26(2) of the Penal Code and Article 50(2)(q) and (p) of *the Constitution* of Kenya 2010 and submitted that his sentence was harsh.
6. He asserted that he was a young man aged thirty-nine (39) years and that he was still young with high prospects in life. He placed reliance on the several cases among them the case of Joseph Barasa Siaputa vs Republic Criminal Appeal No 10 of 2020 (Kisumu Court of Appeal) where the sentence of thirty (30) years was found to be manifestly excessive and was substituted with a fifteen (15) years sentence.
7. The Applicant asserted that he was the bread winner of his family which had since disintegrated hence the need for his guidance and care. He added that his absence had affected their life and rights under Article 53(1) of *the Constitution*. Finally, the Applicant submitted and pointed out that the justification of serving a sentence at the start of the sentence may not be so after a lengthy period into the service and it was only by carrying out a periodic review of the justification for continued of an appropriate fount in the sentence that the factor shifts could be evaluated.



Respondent Written Submissions

8. The Respondent filed its written submissions dated 6th February 2026 and filed on 9th February 2026. On its part, the Respondent through its Learned Prosecution Counsel Mr. Leina Davies invoked the case of Francis Karioko Muruatetu & Another vs Republic Petition No 15 & 16 (Consolidated) of 2015 where the court held that where an appeal was pending before the Court of Appeal, the High Court would entertain an application for re-sentencing upon being satisfied that the appeal had been withdrawn. The Learned Counsel noted that in the present case the Applicant had not exhausted his right of appeal in the Court of Appeal.
9. Counsel listed the mitigating guidelines as espoused in the above case and invoked Section 216 and 329 of the Criminal Procedure Code. He argued that the Applicant was given an opportunity to mitigate at the Trial Court before sentencing and the court noted his mitigation and sentenced him appropriately. He placed reliance on the case of Republic vs Jagani & Another (2001) KLR 590 where it was held that the purpose of the sentence was to assist in rehabilitation of offenders. He asserted that the sentence meted on the Applicant was lawful and urged this court to dismiss his application for lack of merit.
10. Notably, the prosecution Counsel submitted that the Applicant herein was tried, convicted and sentenced by this very court at the first instance for the offence of murder and reviewing his sentence would mean that this court is sitting on appeal of its own decision. He made reference to Article 50(2) (q) of *the Constitution* provides that an accused has the right, if convicted, to appeal to, or apply for review by, a higher court as prescribed by law and that the only option the Applicant had was to appeal or apply for review at the Court of Appeal.

Analysis and Determination

11. I have carefully considered the Application, the affidavit in support thereof and the rival written submissions. In my view, the following issues arise for determination: -

Whether this application for sentence review is merited?

12. The complexity of this application is on the question of jurisdiction. This is a critical issue which must first receive conceptualization by the court. It is therefore necessary to place the question on jurisdiction in perspective. In Halsbury's Laws of England (4th Edition) Vol. 9 at page 350 thus defines "Jurisdiction" as
...” the authority which a court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for decision.
13. In the same context “John Beecroft Sauners in his treatise words and phrases legally Defined Vol. 3 at Page 113 reiterates the latter definition of the term “jurisdiction” as follows: -
“By jurisdiction is meant the authority which a court has to decide matter that are litigated before it or to take cognisance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted and may be extended or restricted by like means. If no restriction or limits is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular court has cognisance or as to the area over which the jurisdiction shall extend, or it may partake both these characteristics. Where a court takes upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given.” (See



also the Owners of Motor Vessel Lilian “S” Vs Caltex Oil Kenya Ltd. (1989) KLR1 that the jurisdiction is everything without it a court cannot make a move. Lack of jurisdiction thus renders a court’s decision void as opposed to it being merely voidable. When an act is void, it is a nullity ab ignition.

14. The Applicant herein was tried, convicted and sentenced by this very Court for the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The Applicant does not challenge the legality of the conviction but merely seeks reduction of sentence. The question therefore is whether this Court can sit on appeal or review over its own sentence. Notably, Article 50(2)(p) as read with 50(2)(q) of the Constitutions provides this court with jurisdiction to review a sentence as follows: -
 - (2) Every accused person has the right to a fair trial, which includes the right: -
 - (p) to the benefit of the least severe of the prescribed punishments for an offence, if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing; and
 - (q) if convicted, to appeal to, or apply for review by, a higher court as prescribed by law.
15. Similarly, Sections 362 and 364 of the Criminal Procedure Code donate revisionary jurisdiction to the High Court over subordinate courts only. The provisions do not confer upon the High Court jurisdiction to revise or review its own judgment rendered while exercising original criminal jurisdiction. Section 364(5) of the Criminal Procedure code provides as follows: -
 - (5) When an appeal lies from a finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed.
16. However, as this court had already determined the conviction and sentence of the Applicant, it cannot review the sentence once again as it would be tantamount to sitting on appeal of its own decision. In the case of Francis Karioko Muruatetu & Another Vs Republic, Petition No 15 & 16 Consolidated of 2015, the Supreme Court clarified that re-sentencing jurisdiction is exercisable in appropriate circumstances and in accordance with established legal procedures. However, the Supreme Court did not confer jurisdiction upon the High Court to review its own sentence where the Applicant has an available right of appeal to the Court of Appeal.
17. The Applicant has expressly stated that he does not intend to appeal before the Court of Appeal. However, a party cannot circumvent the appellate structure established under *the Constitution* and statute by inviting the same court that passed sentence to review its own decision merely because he no longer wishes to pursue an appeal.
18. This Court notes that sentencing is a judicial discretion exercised upon consideration of the circumstances of each case, mitigation, aggravating factors and the applicable law. The record confirms that the Applicant was accorded an opportunity to mitigate before sentence was imposed. The Court considered the mitigation together with the seriousness of the offence before imposing a custodial sentence of twenty-five (25) years imprisonment.
19. The offence of murder remains one of the gravest offences known in law as it involves unlawful deprivation of human life. While rehabilitation is one of the objectives of sentencing, courts must also consider deterrence, retribution, denunciation and protection of the public. The Applicant’s personal circumstances, remorse, family hardship and status as a first offender are indeed mitigating factors. However, those are matters that were available during sentencing and which fall squarely within the province of an appellate court should the Applicant wish to challenge the extent or severity of the sentence imposed.



- 20. Consequently, I find and hold that this Court lacks jurisdiction to review or reduce a sentence imposed by itself while exercising original criminal jurisdiction. The appropriate forum for the Applicant to challenge the sentence imposed is the Court of Appeal pursuant to Article 50(2)(q) of *the Constitution* and the applicable provisions of the Criminal Procedure Code.
- 21. Accordingly, the Notice of Motion Application dated 25th August 2025 lacks merit and is hereby dismissed. It is so ordered.

DATED, SIGNED AND DELIVERED AT VIHIGA THIS 11TH DAY OF MAY 2026

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R. NYAKUNDI
JUDGE

