



**Magero v Republic (Miscellaneous Criminal Application
E031 of 2023) [2025] KEHC 324 (KLR) (24 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 324 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
MISCELLANEOUS CRIMINAL APPLICATION E031 OF 2023**

**WM MUSYOKA, J
JANUARY 24, 2025**

BETWEEN

STEPHEN WESONGA MAGERO APPLICANT

AND

REPUBLIC RESPONDENT

*(Arising from a sentence order, in Busia HCCRC No. 11 of
2021, by Hon. JR Karanjah, Judge, of 14th December 2021)*

RULING

1. The applicant herein had been convicted of murder, contrary to section 203, as read with section 204, of the *Penal Code*, Cap 63, Laws of Kenya, and was sentenced to serve 20 years imprisonment, on 14th December 2021, in Busia HCCRC No. 11 of 2021.
2. He filed the instant application, which is undated, on 15th December 2023. He essentially seeks review of sentence, on the basis that it is harsh and excessive, and that he had reformed or had been rehabilitated.
3. The application has been canvassed by way of written submissions. Both sides have filed detailed written submissions, which I have read and considered.
4. The matter is straightforward. The applicant was convicted and sentenced by this court, differently constituted, in Busia HCCRC No. 11 of 2021. If he was aggrieved by the sentence imposed, he had a right of appeal, to the Court of Appeal, which he apparently did not take advantage of or exercise. The High Court became functus officio once it pronounced sentence. There would be no jurisdiction to entertain any sort of challenge to the said sentence order, even when and where the challenge is disguised as a review application. The applicant is, no doubt, mischievously inviting me to sit on appeal on a decision of my brother, Karanjah J, who was exercising a jurisdiction concurrent to mine. I decline that invitation.



5. Section 362, through to section 364, of the *Criminal Procedure Code*, Cap 75, Laws of Kenya, vests the High Court with revisionary power over court orders, on grounds of impropriety, illegality, incorrectness, or irregularity. Unfortunately, for the applicant, that revisionary power is available only with respect to decisions of subordinate courts, the magistrate's courts in this case. The High Court cannot exercise the revisionary power, given to it by sections 362 to 364 of the *Criminal Procedure Code*, to revise or review its own orders.
6. There can be no merit, whatsoever, in the application that was filed herein on 15th December 2023, as the same is wholly misconceived, and I hereby dismiss it. This file shall be closed. It is so ordered.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA THIS 24TH DAY OF JANUARY 2025.

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Mr. Stephen Wesonga Magero, the applicant, in person.

Advocates

Mr. Onanda Antony, instructed by the Director of Public Prosecutions, for the respondent.

