



**Kaiburi v Republic (Miscellaneous Criminal Application
E016 of 2025) [2025] KEHC 7702 (KLR) (30 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7702 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
MISCELLANEOUS CRIMINAL APPLICATION E016 OF 2025**

RL KORIR, J

MAY 30, 2025

BETWEEN

PATRICK MUTHEE KAIBURI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant, Patrick Muthee Kaiburi filed the present Application seeking review of his sentence. In his undated homemade Application received in court, he states that he was convicted of the offence of murder and sentenced to 18 years' imprisonment on 5th July, 2023. That he was dissatisfied with the conviction and wished the court to reconsider his sentence.
2. The Application is supported by the Applicant's undated and unsworn Affidavit in which he states that he was aggrieved with the sentence.
3. This court observes that the documents filed by the Applicant were not properly drawn and filed. However, the court takes judicial notice that the Applicant is unrepresented and serving sentence without access to facilities to present his case. It is sufficient that the court was able to make out that the Applicant wished to have his sentence reviewed.
4. The Respondents filed submissions in response to the Application.
5. At the hearing of 26th March, 2025 the Applicant urged his Application through oral submissions submitted that he was young when he was arrested and prayed that his sentence be reduced so that he can go home and reorganize his life. That the sentence of 18 years' imprisonment was harsh.
6. The Respondents submitted that the trial court considered all relevant factors and arrived at an appropriate sentence. The Respondent further submitted that the Penal Code provided death sentence and that the 18 years meted out was already a departure from the prescriptive minimum sentence.



Analysis and determination

7. This court's revisionary jurisdiction is provided for under Section 362-368 of the [Criminal Procedure Code](#).

“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.

364.

(1) In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may

(a) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 354, 357 and 358, and may enhance the sentence;

(b) in the case of any other order other than an order of acquittal, alter or reverse the order.”

8. As provided above, the High Court can only undertake criminal revision of the decisions of a subordinate court and not of a superior court.
9. In the case of Daniel Otieno Oracha vs Republic (2019) eKLR, the Petitioner had applied for review of a sentence imposed by a court of concurrent jurisdiction and 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 resentencing 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 Judgment 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.....”

10. In this case, the Applicant along with 5 co-accused were charged and tried for the offence of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#). Their trial was in the High Court



where they were convicted by Gitari J vide a Judgement dated 13th April 2023. He cannot return to the same court to seek a review of the sentence.

11. I have however, and for the comfort of the Applicant, looked at the sentence ruling Gitari J issued sentence on 5th July 2023 as follows:-

“I have also noted the mitigation that they are from the same family and have been in remand for a very long time. Taking all these into account I will consider a custodial sentence and save the accused the mandatory death sentence. I sentence each accused to serve eighteen (18) years’ imprisonment. The sentence be reduced by a period spent in remand that is from 5th January, 2018 to date. Right of Appeal in 14 days explained.”

13. It was clear from the above that the trial court had considered the Applicant’s mitigation and exercised her discretion in sentencing him to a period less than that provided in Section 204 of the Penal Code. The Applicant’s prayer for the period of pre-trial custody was also already included in his sentence.
14. In the final analysis, it is my finding that the Applicant’s recourse for any further reduction of his sentence lies at the Court of Appeal.

Orders accordingly.

RULING DELIVERED, DATED AND SIGNED AT CHUKA THIS 30TH DAY OF MAY, 2025.

.....

R. LAGAT-KORIR

JUDGE

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

