



**Makau v Republic (Criminal Miscellaneous Application  
E082 of 2025) [2025] KEHC 9298 (KLR) (27 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9298 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CRIMINAL MISCELLANEOUS APPLICATION E082 OF 2025**

**A MABEYA, J**

**JUNE 27, 2025**

**BETWEEN**

**ERICK MUSILA MAKAU ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Erick Musila Makau was jointly charged with another, who passed on in the course of the trial before this Court, with the offence of murder contrary to section 203 as read with section 204 of the [Penal Code](#) Cap 63 Laws of Kenya.
2. Following his trial, he was found guilty and convicted and sentenced to serve 30 years' imprisonment. His appeal to the Court of Appeal vide Kisumu CRA No. 165 of 2019 was finally dismissed on 15/3/2024.
3. In its judgment, the Court of Appeal (Okwengu, Omondi and Ngugi JJA) observed: -

“ 31. Finally, on sentence, the appellant urged the Court to review the sentence terming it as excessively harsh. On the other hand, the State urged us not to disturb the sentence as it was very lenient. The appellant herein was sentenced to 30 years' imprisonment for the offence of murder. Although section 204 of the [Penal Code](#) Cap; 63 of the Laws of Kenya provides for a mandatory death sentence for any person charged and convicted with the offence of murder, in Francis Karioko Maruatetu & Another vs Republic SC Petition No. 15 & 16 of 2015, the Supreme Court held that the mandatory nature of the death sentence prescribed for the offence of murder by section 204 of the [Penal Code](#) was unconstitutional as it deprived the Courts of their legitimate jurisdiction to exercise discretion not to impose the death sentence in an appropriate case.



32. The manner in which the crim was committed, laced with wicked malicious scheme scheming, injected with premeditation and murderous intent all rolled up in a scheme to snuff out the life of deceased and the deceased died as a result of gunshot wounds that have been unerringly linked to the appellant; and the learned Judge properly exercised his discretion in sentencing. We see no reason to disturb the sentence of thirty (30) years imprisonment that was meted out on the appellant. The same is hereby affirmed and upheld.”
4. On 28/4/2025, the applicant took out a Motion on Notice in which he sought that his sentence of 30 years be substituted with a lenient one. He raised the issues of Articles 27, 28 and 50(2) of *the Constitution*. That the sentence should be substituted with a lesser one and that the 3 years and 2 months he spent in custody be considered as held in the case of Joseph Wekesa Wanjala vs Republic CRA No. 63 & 65 of 2019.
5. I have considered the record and the applicant’s averment. All I can state is that, the Court of Appeal having rendered itself as it did in its decision of 15/3/2024 in Kisumu CRA No. 165 of 2019, this Court is bereft of any jurisdiction to second guess that Court’s finding.
6. In this regard, the option open to the applicant is to go to the Court of Appeal and seek its indulgence, if there be a route there, and not this Court.
7. Accordingly, this Court has no jurisdiction to entertain the Motion dated 28/4/2025 and hereby strikes is out.

It is so ordered.

**DATED AND DELIVERED AT KISUMU THIS 27<sup>TH</sup> DAY OF JUNE, 2025.**

**A. MABEYA, FCI Arb**

**JUDGE**

