



REPUBLIC OF KENYA



KENYA LAW
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**Camara v Republic (Criminal Miscellaneous Application E374 of 2021)
[2025] KEHC 11249 (KLR) (Crim) (29 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11249 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL MISCELLANEOUS APPLICATION E374 OF 2021**

MW MUIGAI, J

JULY 29, 2025

BETWEEN

JUSTIN CAMARA APPLICANT

AND

REPUBLIC RESPONDENT

(At Jomo Kenyatta International Airport (JKIA), Nairobi CR. Case No. 47 of 2018)

RULING

Background

1. The Appellant, Justin Camara, was charged with the offence of trafficking in Narcotic Drugs contrary to Section 4(a) of Narcotic Drugs & Psychotropic Substances (Control) *Act No4 of 1994*.
2. The particulars of the offence being that on 30th August 2015 at Jomo Kenyatta International Airport within Nairobi County, jointly with others not before court trafficked by conveying Narcotic Drug namely Heroin to wit 5060 grams with a market value of Kshs 15,180,000/- concealed in the false bottom of his suit case in contravention of the provisions of the said Act.
3. The Accused person when charge was read to him, he denied the charge. The Appellant was arraigned in Court on 4/9/2015 and after hearing was convicted of the charge vide judgment delivered by Hon.C.M Onyina on 8/5/2019 and he was sentenced to serve 20 years imprisonment.

Notice of Motion

4. By Application filed on 27/10/2021 and dated 20th October, 2021 the Applicant appealed for review of the sentence seeking the following orders; Pursuant to Article 165 of *the Constitution* & Section 333(2) CPC and all enabling laws;



- (a) That the Court to review the Sentence for purposes of offering the accused person an opportunity to mitigate for purposes of reduction of the sentence of a fine of Kshs 30,000,000/ = in default to serve on year in custody and a custodian sentence of 15 years imposed upon him.
- (b) That the court be pleased to direct the Accused person to appear before it for re-sentencing.
- (c) That this court to find that the time served by the Accused to be sufficient.

Grounds of Appeal

- (a) That the sentence meted on the Accused was harsh in the circumstances, given that there are mitigating circumstances to warrant reduction of sentence.
- (b) That the accused person has mitigating factors that will alter the 15 years custodia sentence and a fine of Kshs 30,000,000/ in default in which he is to serve an additional 1 year.
- (c) That the accused person is a foreigner who has been prison since he was arrested on 30 August 2015, this is a mitigating factor for reduction of sentence.
- (d) That the accused person has developed high blood pressure and ulcers which conditions are not easy to manage in custody.
- (e) That this court is vested with the jurisdiction to hear and determine the present Application.
- (f) That the accused person is remorseful and has undergone several training and received spiritual nourishment and help, he is now a changed man and would serve the society better if his sentence was to be reviewed.

Applicants Supporting Affidavit Dated 25 October 2021

5. That the Applicant intends to pursue a re-sentencing over the conviction of a fine of Kshs. 30,000,000/ = in default serve additional one year (1) year and the custodian sentence of 15 years.
6. That he has been informed by his Advocates on record which information I believe and verify to be true that this Court has jurisdiction to handle this matter pursuant to Article 165 of the 2010 Constitution.
7. That he has mitigating factors that will alter the sentence. He prays that this Court directs that he appears before this court for re-sentencing.
8. That he developed high blood pressure and ulcers which conditions are not easy to manage in custody. (Attached and marked as "JC3" is a copy of my medical records)
9. That he is remorseful and has undergone several training and received spiritual guidance and his sentence was/is to be reviewed. (Attached and marked as "JC4" is a copy of my serve the society better if certificates and documents)
10. That he is a father of two young children who wholly depend on his elderly and sickly mother as his wife left after my incarceration, he is asking for mercy from this court so that he can be able to go home and take care of his children who have currently dropped out of school.
11. That he makes this application with a heavy heart and is very remorseful for the offence that he committed six years ago and he deeply asks to be forgiven and to be given the opportunity to be re-integrated back into the society and to be deported back to his own country.



Applicant's Submissions

12. The Applicant herein was charged with the offence of trafficking Soap contrary to Section 4(a) of the Narcotic Drugs and Ppsychological Substances Control Act. Judgment was delivered on 8th May, 2019 where Applicant was convicted as charged and sentenced to a fine of Kshs. 3,000,000/- or in default serve one year imprisonment and a custodian sentence of 20 years.

A copy of the said Judgment is marked as "JC1" and attached to the Supporting Affidavit sworn by the Applicant on 25th October, 2021)

13. The Applicant was aggrieved by the said decision which triggered him to lodge an appeal against the conviction and sentence. The High Court vide a Judgment delivered on 6th May, 2020 dismissed the Appeal against the conviction and upheld the one against the sentence. In a nutshell, the court reduced his custodia sentence from 20 years to 15 years. (A copy of the said decision is marked as "JC2" and attached to the Supporting Affidavit sworn by the Applicant on 25th October, 2021.

14. The Applicant filed the instant application seeking inter alia:

- a. That the court to consider review of the Sentence for purposes of offering the accused person an opportunity to mitigate for purposes of reduction of the sentence of a fine of Kshs. 30,000,000/ in default to serve on year in custody and a custodian sentence of 15 years imposed upon him.
- b. That the court to direct the Accused person to appear before it for re- sentencing.
- c. That this court to find that the time served by the Accused to be sufficient.

15. On 14th February, 2022 Counsel for the Applicant and the Respondent appeared before this court and the Learned Judge directed that the matter be canvassed by way of written submissions.

16. From the foregoing, the Applicant frames the following issues for determination:

- (a) Whether this court has jurisdiction to entertain the instant application. In the case of;

Samuel Kamau Macharia & Anor Vs Kenya Commercial Bank LTD & 2 others [2012]e KLR where Supreme Court held;

‘A Court’s jurisdiction flows from either *the Constitution* or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by *the constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings.’

17. The jurisdiction of this Court stems from Article 165(3) of *the Constitution* 2010 outlined as follows;

- (3) Subject to clause (5), the High Court shall have—
 - (a) unlimited original jurisdiction in criminal and civil matters;
 - (b) jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened;



- b) Whether the Applicant is entitled to the orders sought.

The Reduction of Sentence should be guided by the Sentencing Policy Guidelines, 2016 published by Kenyan Judiciary that provide that the sentence imposed must meet the objectives in totality.

18. In the case of Timothy Kosgei vs Republic [2020] eKLR that provides;

‘I take note of the fact that the purpose of sentencing is restoration, retribution, restitution among others.’

Respondent’s Skeleton Submissions

19. The respondent herein is opposed to the Applicant’s application and in response to his submissions. We wish to submit that the Applicant was convicted and sentenced by the trial court for the offence of trafficking of narcotic drugs contrary to section 4(a) of the Narcotic Drugs and Psychotropic Substances Control *Act No. 4 of 1994*. The trial court convicted the applicant and sentenced him to pay a fine of Ksh 30 million in default to serve one year imprisonment and in addition to serve a custodial sentence of Twenty years imprisonment.
20. Further, the applicant petitioned the High Court by way of an appeal vide reference HCCRA 121 of 2019. The appeal was canvassed substantively by all parties before Honourable Judge Kimaru. The Court dismissed the Appellant’s appeal against conviction but allowed on sentence. The Court looked into second limb of the custodial sentence by reducing the same to fifteen years from the date of conviction being 8th May 2019. The period spent in custody was also put into consideration. The Applicant’s mitigation was noted and the Judge was categorical that it had considered the mitigation by the appellant and noted that the quantity of drugs seized.
21. This is a court of concurrent jurisdiction, thus cannot sit to review the ruling of a court of concurrent jurisdiction. The Respondent is opposed the Application though not served despite the court’s direction and communication requests from our end. However, we note from the submissions by the applicant there is a clear indication of the prayers sought in the application.
22. The second aspect the appellant is invoking this court is Section 362 of the *Criminal Procedure Code*. The said provision is in reference to matters that are in the Subordinate court. This court cannot therefore entertain this application as to the correctness, legality or propriety of any finding, sentence or order recorded or passed. As canvassed in the previous paragraph Section 333(2) CPC does not apply as the Trial Judge took into account that the Appellant was in custody prior to his conviction.
23. If the Applicant is/dissatisfied with the finding of the said court, he can pursue further remedy on sentence to the Court of Appeal. He is estopped from filing an application of a similar nature before this court. In light of the above, it is my submission that this application be dismissed.

Analysis & Determination

24. The Court considered the instant Application, and filed written submissions and the issues that emerge for determination are twofold;
- a. Is this Court clothed with requisite jurisdiction to consider on merit the instant application?
- b. If so; what remedy orders are amenable to be granted with regard to the Application?



Jurisdiction

25. The jurisdiction emanates from Article 165 of Constitution of Kenya 2010 specifically Article 165 3 (a) –(e) 6 & 7 and other written laws pertaining to the Criminal Justice System.
26. The Applicant invokes jurisdiction of this Court also vide Section 362-364 of Criminal Procedure Code; Section 362 provides as follows;

Power of High Court to call for records

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.
27. The Applicant was tried and convicted and sentenced in Chief Magistrate’s Court in Criminal Case JKIA 47 of 2018 on 8/5/2019. Thereafter, in High Court Criminal Division Criminal Appeal No 121 of 2019 was heard and determined by Hon L.Kimaru J (as he then was) vide Judgment delivered on 6/5/2020.
28. It is this Judgment that the Applicant’s Application that ‘the Court reduced my custodial sentence from 20 years to 15 years. (Attached and marked as "JC2" is a copy of the judgment) and intends to pursue a re-sentencing over the conviction of a fine of Kshs. 30,000,000/= in default serve additional one year (1) year and the custodia sentence of 15 years.
29. The court delivered a Ruling on 16th May 2020 by Hon. Judge L. Kimaru and stated in part as follows:

‘This court notes that the Appellant spent close to three and a half years in custody prior to his conviction by the trial court. This court has also considered the quantity of the narcotic drugs seized from the Appellant as well as the Appellant’s mitigation in the present appeal. This court is of the view that the sentence meted by the trial court was harsh and excessive in the circumstances of this case. The Appellant’s appeal on sentence is therefore allowed. The sentence imposed on the Appellant by the trial court is hereby set aside. The same is substituted by an order of this court sentencing the Appellant to pay a fine of Ksh.30 million or in default serve one (1) year imprisonment. He is additionally sentenced to serve a custodial sentence of fifteen (15) years from the date he was convicted by the Trial Court 8/5/2019. This Court has taken into account the period that the Appellant was in lawful custody prior and after conviction by the Trial Court. Upon completion of his sentence, the Appellant is to be repatriated to his country. It is so ordered’
30. This Court finds the Application for re-sentencing is not properly before this Court as Article 165(3) Constitution was lawfully and legally applied by the High Court – vide proceedings that culminated with Judgment of 6/5/2020 by Hon L Kimaru J – Judge of the High Court (as he then was). This Court and the High Court that handled the Appeal are both Courts of similar, equal, concurrent and competent jurisdiction. Hence this Court lacks competent jurisdiction re-sentencing proceedings where the Appeal was heard and determined in the High Court.
31. The Jurisdiction provided by Section 362-364 CPC applies where the High Court considers proceedings, order, ruling or judgment and sentencing by the Trial Court/Magistrate’s Court on correctness, legality or propriety.



32. Section 333(2) of CPC that requires the Pretrial and Presentence period that the Applicant was in custody and not out on bond or bail shall be taken into account in computation of the sentence by the Trial Court as shown in the judgment of 6/5/2020.

Disposition

The Application filed on 27/10/2021 dated on 25/10/2021 is dismissed for Court's lack of jurisdiction.

RULING DELIVERED DATED & SIGNED IN OPEN COURTIN NAIROBI CRIMINAL DIVISION ON 29/7/2025 VIRTUALLY/PHYSICALLY.

M.W.MUIGAI

JUDGE

