



REPUBLIC OF KENYA



KENYA LAW
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**Owino v Republic (Criminal Petition 41 of 2023)
[2024] KEHC 5074 (KLR) (30 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 5074 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL PETITION 41 OF 2023
DO OGEMBO, J
APRIL 30, 2024**

BETWEEN

BRIAN OTIENO OWINO APPLICANT

AND

REPUBLIC RESPONDENT

(Being an Application for Sentence Review from Sentence in Siaya in Chief Magistrate's Court in Criminal Case No. 201 of 2020 delivered on 8/2/2022 by Hon. M. O. Wambani - CM)

RULING

1. The Applicant, Brian Otieno Owino, has moved this court by way of a Notice of Motion Application dated 10/8/2023. In the Application, the Applicant leads for revision of his sentence of 30 years imprisonment for the offence of Manslaughter contrary to Section 202 as read with 205 of the [Penal Code](#). He has pleaded that the sentence is harsh and that his mitigation be considered.
2. In the mitigation the Applicant has filed, he has raised several factors raising the same mitigation of taking care of his sister, and that he was a first offender. He relied on several authorities stressing on the necessity of mitigation including [Francis Karioko Muruatetu & Ano. v R](#), [2017] eKLR, Muchumu & Ano. v R (SA), [R v Cleophas Osindi Odenyo, John Muoki Mbatha v R](#), Cr. Appeal No. 72 of 2002, [Juma Onyango Ibrahim](#), CR. Appeal No. 312 of 2009 And [Joseph Kimani Njau v R](#), CR. Appeal No. 375 of 2011.
3. The prosecution has opposed this application on grounds that the Applicant ought to pursue an appeal on sentence.



4. I have considered the submissions herein by both sides. The applicant was tried, convicted and sentenced to serve 30 years imprisonment for the offence of manslaughter contrary to Section 202 as read with 205 of the Penal Code. Section 205 of the Penal Code states;

“ Any person who commits the felony of manslaughter is liable to imprisonment for life.”

5. After his conviction and sentence, the Applicant filed HCCR Appeal No. E005/2023, which appeal was dismissed both on the issue of conviction and sentence. The issue that crops up is whether this court can revise the orders on sentence of a court of concurrent jurisdiction.

6 Neither the Constitution nor any written law bestows any such jurisdiction upon this court. For lack of jurisdiction, this application must fail.

7. Suffice it to say that the said sentence of the Applicant of 30 years imprisonment is legal and proper.

8. I accordingly find no merit in this application dated 10/8/2023. I dismiss the same.

DATED, SIGNED AND DELIVERED THIS 30TH DAY OF APRIL, 2024.

D. O. OGEMBO

JUDGE

30/4/2024

Court

Ruling read out in Open Court in presence of the Applicant (Kisumu) Maximum and Ms. Mumu for the State.

D. O. OGEMBO

JUDGE

30/4/2024

