



**Onyango v Republic (Criminal Miscellaneous Application  
127 of 2023) [2024] KEHC 4649 (KLR) (29 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4649 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT SIAYA  
CRIMINAL MISCELLANEOUS APPLICATION 127 OF 2023**

**DO OGEMBO, J**

**APRIL 29, 2024**

**BETWEEN**

**JULIUS OMONDI ONYANGO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an Application for Sentence Review from Sentence in the High Court at Siaya in Criminal Case No. 30 of 2017 delivered on 22/7/2019 by Hon. Justice R.E. Aburili - Judge)*

**RULING**

1. Julius Omondi Onyango, the Applicant has filed a Notice of Motion Application herein on 4/8/2023. In the Application, the Applicant seeks revision of his sentence. In the Affidavit in support of the Application, the Applicant depones that he faced a charge of Manslaughter contrary to Section 202 of the [Penal Code](#) and was sentenced by the Hon. Aburili Judge to serve 15 years imprisonment.
2. The prosecution has opposed this application on grounds that the High Court already dealt with this case and the Applicant can only file an appeal against the decision of the court.
3. I have considered this application and the response from the prosecution's side.
4. I have also considered the submissions the Applicant has filed herein. The said submissions are basically factors of mitigation raised by the Applicant. That he is law abiding and has learnt the ills of crime and reformed that he is remorseful.
5. This application brings up the issue of whether this court is seized of the jurisdiction to entertain it in the first place. I have perused the relevant records of the trial court. Same show that Applicant was first charged with the offence of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#). The Honourable Judge proceeded to find the Applicant guilty of the lesser offence of manslaughter contrary to Section 202 as read with Section 205 of the [Penal Code](#) and sentenced him to serve 15



years imprisonment, the sentence to run from his date of arrest on 22/1/2017. This is the sentence the Applicant seeks to be revised by way of this application.

6. Article 165 of the *Constitution* of Kenya spells out the jurisdiction of the High Court. Similarly, Section 362 of the *Criminal Procedure Code* also provides for revisionary powers of the High Court. In both instances, the powers of revision bestowed on the High Court is limited to orders of subordinate courts and tribunals. This court therefore does not possess any jurisdiction to revise any order or findings made by a Judge of concurrent jurisdiction. This would be tantamount to this court sitting on appeal on its own decision. This would be unconstitutional as well as illegal. The orders sought by the Applicant can therefore not issue.
7. I therefore find this application of the Applicant filed herein on 4/8/2023 lacking in any merit. I dismiss the same wholly.

File Closed.

**DATED, SIGNED AND DELIVERED THIS 29<sup>TH</sup> DAY OF APRIL, 2024.**

**D. O. OGEMBO**

**JUDGE**

Ruling read out in open court in presence of the Applicant and Ms. Mumu for the State.

