



**Otieno v Republic (Miscellaneous Criminal Application  
E012 of 2023) [2024] KEHC 6220 (KLR) (31 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 6220 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
MISCELLANEOUS CRIMINAL APPLICATION E012 OF 2023**

**WM MUSYOKA, J**

**MAY 31, 2024**

**BETWEEN**

**DENNIS OGOLA OTIENO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The application herein, undated, but filed on 31<sup>st</sup> May 2023, seeks review of sentence. The applicant had been convicted, on 2<sup>nd</sup> December 2020, in Busia HCCRC No. 8 of 2019, of manslaughter, contrary to section 202, as read with section 205, of the *Penal Code*, Cap 63, Laws of Kenya. He was sentenced to serve 15 years imprisonment, on the same date.
2. In his application, he says he is not challenging the decisions of the court, but rather he is pleading for leniency. He argues that he has reformed.
3. The applicant was convicted and sentenced in December 2020, to 15 years in jail. He has hardly served a third of that sentence, and he is already approaching the court for review. The period that he has so far served is not even adequate for the prison authorities to gauge whether he has reformed, or been rehabilitated, or not.
4. Secondly, there is no legal basis whatsoever for the court to review sentence. Review is exercised within the law, either through appeal, or revision. He was convicted and sentenced by the High Court, he cannot then ask the High Court, by any means, to re-visit its earlier orders, for review or anything else, for the *functus officio* principle applies. He should have moved the Court of Appeal on appeal.
5. Thirdly, he says that he does not challenge the orders by the court. Courts only re-visit earlier orders, whether on appeal or revision, on account of some mistake or error. Review of sentences, on other considerations, such as mercy, is the province of the Executive, not the courts, through either remission



or mercy. Let the applicant herein take advantage of those processes, for there is no way a court is going to intervene in this case on the grounds that he is advancing.

6. Fourthly, the applicant is perhaps getting misguided when he sees his fellow inmates moving the court for review of sentences, based on such decisions as *Francis Karioko Muruatetu & another vs. Republic [2017]* eKLR (Maraga CJ&P, Mwilu DCJ&VP, Ojwang, Wanjala, Njoki & Lenaola, SCJJ), *Maingi & 5 others vs. Director of Public Prosecutions & another [2022]* KEHC 13118 (KLR) (Odunga, J), *Edwin Wachira & 9 others vs. Republic Mombasa HC Petition No. 97 of 2021* (Mativo, J), *Julius Kitsao Manyeso vs. Republic Malindi CACRA No. 12 of 2021* (Nyamweya, Lesiit & Odunga, JJA) and *Evans Nyamari Ayako vs. Republic Kisumu CACRA No. 22 of 2018* (Okwengu, Omondi & J. Ngugi, JJA)(unreported). Unfortunately for him, these decisions do not apply to his case. These decisions pronounced certain positions unconstitutional, and it would only be those whose cases are affected by such unconstitutionality, who can take advantage of these decisions, and move the court for review. The sentence imposed on the applicant is not affected by any form of unconstitutionality, and he has not raised any issue in that direction.
7. There is no merit whatsoever in the application before me, and I hereby dismiss it. This file shall be closed.

**RULING DELIVERED, DATED AND SIGNED, IN OPEN COURT, AT BUSIA, ON THIS 31<sup>ST</sup> DAY OF MAY 2024**

**W MUSYOKA**

.....

**JUDGE**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

Mr. Arthur Etyang, Court Assistant.

Mr. Dennis Ogola Otieno, the applicant, in person.

Advocates

Ms. Chepkonga, instructed by the Director of Public Prosecutions, for the respondent.

