



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Wachu v Republic (Criminal Revision E047 of 2023)  
[2024] KEHC 10517 (KLR) (28 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10517 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CRIMINAL REVISION E047 OF 2023**

**A MSHILA, J**

**AUGUST 28, 2024**

**BETWEEN**

**GEORGE MUNIU WACHU ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant has premised his application under the provisions of Articles 22(1), 23(1), 25(c), 27, 28, 50(2)(p)(q), 160(1) and 165(3)(b) of the Constitution 2010; he was seeking a re-hearing of his life sentence on the grounds that it is indeterminate and inhumane and not in line with the decision rendered by the Court of Appeal in Mombasa Petition No 97 of 2021.
2. The Applicant was charged and convicted for the offence of Robbery with Violence Contrary to Section 296(2) of the Penal Code in Criminal Case No 1259 of 2009 Githunguri SRMs Court. After a full hearing he was found guilty and convicted of the offence and the sentence imposed by the Githunguri trial court was the mandatory death sentence. Being aggrieved he lodged an appeal to the High Court vide HCRA No 150 of 2008 and a second appeal thereafter to the Court of Appeal vide COA No 363 of 2012; both appeals were dismissed and the sentence was affirmed.
3. The Applicant now seeks a review of the sentence to a lenient and definite sentence; at the hearing hereof, the Applicant was unrepresented and relied on his supporting affidavit which he briefly highlighted; Mr Gacharia appearing for the State was not opposed to the application but requested that the Githunguri lower court record be availed to assist this court in making its decision in determining the appropriate sentence to be considered.

**Applicant's Case**

4. The Applicant submitted that this court was seized of competent jurisdiction to hear and determine this matter under the provisions of Article 50(2)(p) and (q) of the Constitution 2010.



5. The Applicant had been sentenced to a mandatory sentence as prescribed by law without due consideration of mitigation or the unique facts and circumstances of his case; he prayed to be granted a definite and lenient sentence; and also prayed that the period spent in remand be taken into consideration pursuant to the provisions of Section 333(2) of the Criminal Procedure Code.

### **Issues For Determination**

6. After hearing the Applicants submissions this court framed the following issues for determination which were;
  - i. Whether this court has jurisdiction to hear and determine the issues of re-sentencing and
  - ii. Whether the applicant is entitled to benefit from the provisions of Section 333(2) of the Criminal Procedure Code

### **Analysis**

#### **Whether this court has jurisdiction to hear and determine the issues of review of sentence**

7. Upon perusal of the court record it is noted that having exhausted all the avenues of appeal the applicant had filed a Constitutional Petition No 58 of 2018 in the High Court Mombasa in which he sought a review of his sentence. The file was transferred to Nairobi and given Constitutional Petition No 371 of 2018 and the Honourable Judge Ngeenye sitting in Nairobi on the 5<sup>th</sup> March, 2019 directed that the file be remitted to Githunguri Law Courts for re-sentencing;
8. On the 15/05/2019 the Githunguri court after hearing his mitigation resented the applicant and sentenced him to life imprisonment; the applicant not being satisfied made another attempt to revise the sentence in the Kiambu High Court which application was struck out on 30/06/2022.
9. The Applicant instead of filing a Petition seeking the authority of this court to uphold his rights that may have been infringed upon opted to file an application for review.
10. This court can only exercise its powers of revision in cases of proceedings from subordinate courts. This court has no jurisdiction to review a sentence already reviewed by a court of concurrent jurisdiction.
11. In the circumstances the application is found to be improperly before this court and also found to be incompetent;

### **Findings And Determination**

12. For the forgoing reasons this court makes the following findings and determinations;
  - i. This court finds that it lacks jurisdiction to hear and determine the application.
  - ii. The application for review of sentence is found to be incompetent and it is hereby struck out.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 28TH DAY OF AUGUST, 2024.**

**A.MSHILA**  
**JUDGE**

In the presence of;



Mourice – Court Assistant

Gacharia – for the State

Applicant – present from Manyani Maximum Prison

