



**Mganga & another v Republic (Miscellaneous Application  
E021 of 2023) [2023] KEHC 24074 (KLR) (26 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 24074 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
MISCELLANEOUS APPLICATION E021 OF 2023  
GMA DULU, J  
OCTOBER 26, 2023**

**BETWEEN**

**ALI MGANGA ..... 1<sup>ST</sup> APPLICANT**

**RAPHAEL KIRIGHA ..... 2<sup>ND</sup> APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The two applicants herein filed requests for review of sentence at Mombasa High Court. The file was later sent to this court when a resident Judge was posted to Voi, and the matter was designated as Voi High Court Miscellaneous Application No. E021 of 2023, the present file herein.
2. The two applicants filed their written submissions in Mombasa High Court Miscellaneous Application No. E162 of 2022, before the file was transmitted to Voi. On their part, the Director of Public Prosecutions filed written submissions in this present file after the matter was transmitted to this court.
3. In particular, the Director of Public Prosecutions opposes the request for revision on sentence on the ground that this court lacks jurisdiction to review the decision or judgment of the predecessor Judge at Voi – Justice Farah Amin.
4. I note that in a judgment delivered on February 25, 2020 by Justice Farah Amin, in Voi High Court Criminal Appeal No. 28 of 2018 and 29 of 2018, the Judge ordered in the presence of both applicants herein that sentence would be determined after a probation report was filed and considered by the court.
5. In documents filed in their application, the applicants did not disclose what sentence was handed down to them after receipt of the probation report by the High Court.



6. However, in the first paragraph of their written submissions they state that the death sentence imposed by the trial court, was reduced by the High Court to 30 years imprisonment.
7. In my view, after the High Court substantively considered the initial death sentence and reduced the same to 30 years imprisonment, this court's jurisdiction was spent by that considered decision on the sentence imposed and cannot now review the same, as the sentence is no longer the decision of the trial court but the substantive decision of this court, which cannot be reviewed by the same High Court on review.
8. I thus agree with the Director of Public Prosecution that this court has no jurisdiction to review its own decision in sentencing herein.
9. Consequently, I find no merits in the application of the two applicants. The application is hereby dismissed.

**DATED, SIGNED AND DELIVERED THIS 26<sup>TH</sup> DAY OF OCTOBER 2023 AT VOI IN OPEN COURT.**

**GEORGE DULU**

**JUDGE**

**In the presence of:-**

**Alfred**

**Both applicants**

**Mr. Sirima for State**

