



**Karamana v Republic (Miscellaneous Criminal Application E035 of 2021)
[2022] KEHC 14223 (KLR) (Crim) (25 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 14223 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
MISCELLANEOUS CRIMINAL APPLICATION E035 OF 2021
DO OGEMBO, J
OCTOBER 25, 2022**

BETWEEN

JANET KARAMANA APPLICANT

AND

REPUBLIC RESPONDENT

(Criminal Appeal (COA) No. 88/2014)

RULING

1. The applicant, Janet Karamana, court has moved this court by way of Notice of Motion application dated 1.2.2021. The application is brought under Articles 23(3) and 50 of the Constitution, section 333(2), 12, 14 and 135, and section 46 of the Prisons Act. The application seeks the following orders:-
 1. That this court be pleased to commit the applicant's prison sentence to the period already served.
 2. That in the alternative the Honourable court be pleased to further revise the sentence of 10 years to a non-custodial sentence.
2. The application is supported by an affidavit of the applicant. The Respondent opposes this application. By agreement of the parties, this application was canvassed by way of written submissions.
3. For the applicant, a history of this was given. That the applicant was first tried, convicted and sentenced to serve 30 years imprisonment, which on appeal vide Criminal Appeal (COA) No. 88/2014, was enhanced to Death sentence. That following the decision in Francis Karioko Muruatetu & another Versus Republic (2017)eKLR, the applicant applied for resentencing in Misc. Application No. 539/2018. She was accordingly resentenced to serve 10 years imprisonment (Kimaru J.). This is the sentence the applicant applies to be further reviewed.



4. It was submitted that the issue is whether this court has the jurisdiction to revise the orders of a Judge of concurrent jurisdiction. Counsel for the applicant submitted that the resultant effect of the decision in Muruatetu is that the hands of the court has been unbound in exercising its discretion in resentencing applications, and that the discretion is not limited to a single instant. That in this case, new circumstances have arisen of ill health of the applicant. He relied on *Republic Versus Bernard* (1997) 1 Criminal Appeal, 135, and *Mulamba Ali Mubada Versus Republic*, Criminal Appeal No. 121/2013 (msa), that ill health is a factor to be considered in sentencing.
5. To that extent, it was submitted that this court has the jurisdiction to revise the resentencing orders of the Hon. Justice Kimaru.
6. Counsel also relied on the case of *Francis Opondo Versus Republic* (2017) and *Dalmas Omboko Ongaro Versus Republic* (2016)eKLR, on principles of sentencing. And the Judiciary sentencing policy Guidelines (Paragraph 4.1) which gives the sentencing objectives as:
 - i) Retribution.
 - ii) Deference.
 - iii) Rehabilitation.
 - iv) Restorative Justice.
 - v) Committing protection.
 - vi) Denunciation.
7. Counsel also referred the court to more authorities on the same issue of sentencing, including; *Duncan Kyalo Muange & Another Versus Republic* (2019)eKLR, *Republic Versus Peter Mutuku Mulwa & Another* (2020)eKLR, *Bethwel Wilson Kibor Versus Republic* (2009)KLR, *Abamad Abolfathi Mohamed & Another Versus Republic* (2018)eKLR.
8. The Respondent, on the other hand, opposed this application and submitted that in resentencing the appellant to 10 years, the court duly took into account the fact that the applicant had already been in custody for 10 years. that the court which resentenced the applicant is a court of concurrent jurisdiction and so this court cannot sit to review the ruling of the Honourable Judge. That the applicant's only course is to appeal to the Court of Appeal. It was pleaded that this application be dismissed.
9. I have considered the 2 parallel submissions of the parties. In deciding on this application, it is important to consider its history and background. The applicant was first tried, convicted and sentenced to serve 30 years imprisonment. This was on 27.8.2013 (Ombija J.) in HCCR case no. 15 of 2010. Aggrieved by the decision, the applicant appealed to the Court of Appeal in Criminal Appeal No. 88 of 2014. The Court of Appeal (G. B. Kariuki, Mwilu, Sichale JJA), in a judgment dated 18.12.2015, dismissed her appeal and in the process enhanced her sentence to death sentence. Later, following the Supreme Court decision in the Francis Kariuki Muruatetu case, the applicant applied to the High Court for resentencing vide High Court miscellaneous criminal Application No. 539 of 2018. On 21.5.2019, the Honourable Justice Kimaru re-sentenced the applicant to serve 10 years imprisonment with effect from the date of resentencing. This is the order that the applicant seeks that this court revises.
10. The issue therefore that immediately props up for determination, as a preliminary issue, is whether this court is possessed of the Jurisdiction to revise the said orders of a court of concurrent jurisdiction.



11. Article 165 of the constitution grants this court jurisdiction on the specific area listed thereunder. At Article 165, jurisdiction may be conferred by legislation. It is therefore safe to hold that this court can only exercise jurisdiction as conferred by either the constitution or legislation. And that this court cannot assume any jurisdiction granted to it as above. Any attempts therefore to assume any such jurisdiction not granted by the constitution or such written law, must therefore be frowned off and be rejected to the extent of its unconstitutionality as well as illegality.
12. A reading of Article 165 of the constitution does not support the applicants submissions that this court possesses the jurisdiction to revise any orders or findings of a court of concurrent jurisdiction. No statute confers any such jurisdiction on this court.
13. It is for this reason that I do not find any merit in the applicant's application that urges this court to revise the substantive orders of the Hon. Justice Kimaru, a Judge of concurrent jurisdiction. This application dated 1.2.2021 therefore fails and is dismissed wholly. Orders accordingly.

D. O. OGEMBO

JUDGE

25TH OCTOBER, 2022.

Court:

Ruling read out in presence of the applicant (Langata Women) and Ms. Akunja for the state.

D. O. OGEMBO

JUDGE

25TH OCTOBER, 2022.

