



REPUBLIC OF KENYA



Rai v Republic (Petition E121 of 2023) [2024] KEHC 6936 (KLR) (15 May 2024) (Ruling)

Neutral citation: [2024] KEHC 6936 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
PETITION E121 OF 2023
GMA DULU, J
MAY 15, 2024**

BETWEEN

RAI GOFA RAI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. This matter was registered and file opened as a Constitutional Petition, but in actual sense it is a Notice of Motion filed on 14th September 2023, seeking review of sentence.
2. The application was filed with a supporting affidavit sworn by the applicant, in which he depones that he was sentenced to death for robbery with violence in Voi SRM Criminal Case No. 1040 of 2007, and that his appeal to the Mombasa High Court Criminal Appeal No. 127 of 2009 was dismissed, and his further appeal to the Court of Appeal No. 74 of 2012 was also dismissed, and that the death sentence was later commuted by the President to life imprisonment.
3. The Notice of Motion was canvassed through written submissions filed by the applicant as well as the Director of Public Prosecutions. I have perused and considered the submissions filed on both sides.
4. Having considered the grounds on which this application was brought and the submissions on both sides, I come to the conclusion as suggested by the Prosecuting Counsel that this court at this stage has no jurisdiction to deal with and handle this application.
5. The first reason is that though the applicant has asked this court to review his sentence, this court cannot do so under its revision power in Section 362 and 364 of the *Criminal Procedure Code* (Cap.75), as that revision jurisdiction is limited to dealing with decisions made by subordinate courts, and the decisions in issue herein on both conviction and sentence are the appellate decisions of the High Court and the Court of Appeal, from the trial conducted in the Magistrate's court. This court cannot purport to review its own decisions or the decisions of the Court of Appeal.



6. Secondly, the *Muruatetu & Another v Republic case* (Petition 15 and 16 of 2015) (2021) KESC 31 (KLR) (6th July 2021 (Directions), which the applicant relies upon, only applies to cases of the mandatory death sentences imposed for murder cases. It does not apply to all other cases. Thus this case being a case of robbery with violence, this court cannot purport to deal with it in terms of the reasoning on sentence in the Muruatetu case.
7. In view of the above considerations, and in line with the reasoning in the case of *Owners of the Motor Vessel "Lilian S" v Caltex Oil (Kenya) Ltd* (1989) KLR1, in which it was held that jurisdiction is everything, I have to down my tools.
8. I thus find that this application has been filed in the wrong forum, which has no jurisdiction to entertain it. As a consequence, I strike out the application.

DATED, SIGNED AND DELIVERED THIS 15TH DAY OF MAY 2024 IN OPEN COURT AT VOI.

GEORGE DULU

JUDGE

In the presence of:-

Alfred – Court Assistant

Applicant

Mr. Sirima for State

