



**Kamanga v Republic (Criminal Revision 01 of 2023)
[2024] KEHC 7458 (KLR) (14 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7458 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CRIMINAL REVISION 01 OF 2023**

**RC RUTTO, J
JUNE 14, 2024**

BETWEEN

DANIEL KAMAU KAMANGA APPELLANT

AND

REPUBLIC RESPONDENT

RULING

1. Before Court is an application by way of an undated Notice of Motion brought pursuant to section 333(2) of the *Criminal Procedure Code*. The application was evidently drafted by the applicant in person, reason why the same does not outrightly and precisely set out the order(s) sought and the grounds upon which it is premised. However, upon a thorough perusal of the application, one can glean that the applicant is aggrieved by the 50 years imprisonment sentence meted out to him by the re-sentencing court. Secondly, he also seeks for an order that the 50 years imprisonment sentence be effective from the date of his arrest.
2. Filed contemporaneous with the application is a supporting affidavit which I note the same falls short of the law governing affidavits as the same is not commissioned. I will invoke the provisions of Article 159(2)(d) of our *Constitution* which emphasizes on substantive justice and not procedural technicalities and decipher the applicant's plea before the Court herein for what it is. This should however be limited to the circumstances of this case as the appellant is acting in person.
3. The application is amplified by the undated submissions filed by the applicant and received by the court on 17th January 2024. The applicant submits that there is a recent holding by the Court of Appeal that life sentence should be equated to 30 years. He seeks to rely upon the case of Ali Abdulla Mwanza Vs Republic, Mombasa Criminal Appeal No 259 of 2012 and urges the court to take consideration of his age (which is 58 years) and the period he has been in prison (which is 22 years) from the date of arrest.



4. The appellant submits that the re-sentencing court did not take into account his age and the period he has been in custody. He urges the court to find that the 50 years sentence is contrary to Article 25 (a) and 29 (4) of the Constitution. To support this argument, he relies on the case of *T.P and A.T Vs Hungary* application 3787 of 2014 and 73989 of 2014 which held that 40 years was too long and violation of article 3 of the European Convention on Human Rights. Also quoted is the case of Fred Michael Bwayo Criminal Appeal No 130 of 2007 Court of Appeal. He urges this court to strike a balance between compassion, pragmatism and piety and arrive at a reasonable sentence.
5. In addition, to support these arguments, the applicant has made reference to the following authorities, *Robert Nyugura Muthie Vs Republic* Criminal Appeal No 101 of 2023 Kibera, Criminal Appeal No 22 of 2018 at Court of Appeal Kisumu, Criminal Appeal No 110 of 2022 at Mombasa.
6. The applicant urges the court to consider that he has undertaken numerous rehabilitation programs and courses and that he has a recommendation letter from the Prison Department. He prays that this court reduces the sentence to 20 years so that it can align with the concept of life expectancy.
7. In response to this application the respondent filed a replying affidavit sworn by Esther C.W Torosi and submissions all dated 15th February 2024.
8. The respondent states that this court has no jurisdiction to entertain the application since the present application is similar to Criminal Petition No 19 of 2019 in which the High Court at Nairobi being a concurrent jurisdiction heard and determined the application on the issue of the sentence. Further, that there is no new and compelling evidence that has become available to entertain the issue of review of sentence.
9. The respondent further submit that the High Court has become functus officio and cannot sit on an appeal on its own jurisdiction and that the applicant has not exhausted all the avenues since he can approach the Court of Appeal for the orders he is seeking.
10. The respondent urges the court to dismiss this application since it is an abuse of the court process and waste of judicial precious time.

Issue for determination

11. I start by pointing out that on the face of the application the applicant moved this court under the provisions of section 333(2) of the Criminal Procedure Code. However, the scope of the prayers sought stretches beyond the requirements of this section of the law.
12. While section 333(2) of the Criminal Procedure Code provides that the sentence shall be deemed to commence from, and to include the whole of day of, the date on which it was pronounced and will take into account the period spent in custody, the applicant is seeking this court revises his sentence from 50 years to 20years. Presumably, he is seeking a review of his sentence.
13. Consequently, three issues emerge for determination:
 - i. Whether this Court has jurisdiction to determine this matter;
 - ii. Whether the re-sentencing court did not apply section 333(2) of the CPC; and
 - iii. Whether the 50 years imprisonment sentence should be reviewed.
 - i. Whether the Court has jurisdiction



14. The applicant herein was convicted and sentenced to death by the lower court in Thika Chief Magistrates' Court Criminal Case No. 3019 of 2001 for an offence of robbery with violence. Following this, the applicant proceeded to lodge an appeal being Nairobi High Court Criminal Appeal No 1354 of 2002 whereby the High Court upheld both the conviction and sentence. This was on 25th May 2006. It would appear that with the development of the law and emergence of jurisprudence in the Supreme Court decision of *Francis Karioko Muruatetu and another vs Republic*, (Muruatetu 1), the applicant lodged an application for re-sentencing vide Thika Law Court Criminal Petition No 19 of 2019 where the death penalty was reduced to a term of 50 years imprisonment. It is important to point out that the Petition for re-sentencing was filed and granted by the High Court at Nairobi. It is this decision sentencing him to 50 years that he is aggrieved with and seeks the intervention of this Court.
15. The Respondent has urged that this Court has no jurisdiction as the decision sought to be reviewed was issued by court of concurrent jurisdiction. The applicant has not addressed this Court on this issue of jurisdiction. Be that as it may, jurisdiction is everything and it can be raised at any time. It is trite that even a court can raise a jurisdiction issue suo motto. (See the case of *Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others* [2012] eKLR). Consequently, it behooves me to first determine whether this Court has the jurisdiction to entertain this application.
16. The respondent has urged that this court has become functus officio and cannot sit on an appeal on its own jurisdiction. That the court has no jurisdiction to entertain the application since the present application is similar to Criminal Petition No 19 of 2019 in which the High Court at Nairobi being a concurrent jurisdiction heard and determined the application on the issue of the sentence. Further, that there is no new and compelling evidence that has become available to entertain the issue of review of sentence.
17. In addition, the respondent stated that the applicant/has not exhausted all the avenues since he can approach the Court of Appeal for the orders he is seeking.
18. It is common ground that the applicant was first tried for robbery with violence and upon conviction sentenced to death. The death sentence was substituted for a term sentence of 50 years upon a successful petition to the High Court. The applicant is aggrieved with that term sentence of 50 years. Is this Court the right for forum for raising his grievances? I do not think so.
19. Article 165 of the *Constitution* establishes the High Court, which pursuant to Article 165(b), shall be organized and administered in the manner prescribed by an Act of Parliament. The *High Court (Organization and administration) Act*, Cap 8C of the Laws of Kenya in section 4 provides that:
 1. The Court shall consist of-
 - a. The principal Judge; and
 - b. Not more than two hundred judges appointed in accordance with section 166(1)(b) of the *Constitution*.
20. It emerges that despite the location of a particular High Court station, the High Court is established as a single unit. Whether sitting in Nairobi or Thika, the High Court remains one. Consequently, a High Court sitting in Thika cannot purport to sit on appeal or review of a decision of another High Court sitting in Nairobi.
21. Consequently, the decision which is sought to be reviewed having been rendered by the High Court in Nairobi, this Court has no jurisdiction to sit on its review or appeal. A consideration whether the re-sentencing court considered section 333(2) of the *CPC* and whether the 50 years was excessive is a



matter which ought to have been raised when he first applied for resentencing, in any event those are matters that can only be considered by the Court of Appeal.

22. From the foregoing therefore, it is clear that this court cannot and does not have jurisdiction to review the decision of a court of concurrent jurisdiction. For those reasons I dismiss the application for want of jurisdiction

It is so ordered.

RHODA RUTTO

JUDGE

DELIVERED, DATED AND SIGNED ON 14TH THIS DAY OF JUNE 2024 AT NAIROBI

Appellant: Present Virtually from Kamiti Maximum Prison

Respondent: Ms. Ndenda holding brief for Mr. Gacharia

Court Assistant: Peter Wabwire

