



REPUBLIC OF KENYA



Nzuga v Republic (Petition E111 of 2023) [2024] KEHC 9004 (KLR) (13 June 2024) (Ruling)

Neutral citation: [2024] KEHC 9004 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
PETITION E111 OF 2023
GMA DULU, J
JUNE 13, 2024**

BETWEEN

RAMA MAMBO NZUGA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Though this matter is in a court file that is for a constitutional petition, it is actually an application filed on 20th July 2023 for review of sentence seeking the following orders:-
 1. That the court be pleased to review the death sentence imposed by the trial court, affirmed by the High Court and confirmed by the Court of Appeal and later committed to life imprisonment to a more lenient sentence pursuant to Article 50(2)(p)(q) of the *Constitution*.
 2. That should the eventual computation be a balance of three (3) years or less, the court be pleased to grant the applicant probation orders if his circumstances so fit.
2. The application was filed with a supporting affidavit sworn by the applicant Rama Mambo Nzuga on 13th June 2023, in which several decided court cases were relied upon, especially the case of *Francis Karioko Muruatetu & Another v Republic* [2017] eKLR.
3. The application was canvassed through written submissions. In this regard, I have perused and considered the submissions filed by the applicant as well as the submissions filed by the Director of Public Prosecutions.
4. I have also been availed a copy of the judgment in Mombasa Criminal Appeals Nos. 375 and 379 of 2012 (consolidated) *Rama Mambo Nzuga and James Kilungu Mlacha v Republic*.
5. Having myself considered the application and the arguments on both sides, I agree with learned Prosecuting Counsel Mr. Sirima that this court has no jurisdiction to review the sentence herein.



6. The first reason is that the review powers of this court in criminal cases are governed by the provisions of Sections 362, 363 and 364 of the *Criminal Procedure Code* (Cap.75). Under those provisions, this court can review only errors on the face of its record, or errors of law or procedure committed by subordinate courts. This matter having gone all the way to the Court of Appeal, this court cannot exercise its review jurisdiction as errors on the face of the record in the Court of Appeal can only be corrected in that court.
7. The second reason why this court cannot review the sentence herein is that the issue of sentence herein was substantively considered in the Magistrate's court, in the High Court and the Court of Appeal. A substantive decision of the High Court cannot be reviewed by this court. A decision of the Court of Appeal cannot also be reviewed by this court.
8. Additionally, the *Muruatetu* case decision of the Supreme Court does not apply herein because that decision relates only to mandatory death sentences in murder cases and not other cases. This case not being a murder case, that decision does not apply.
9. I thus find no merits in the application herein. The application for review of sentence is thus hereby dismissed.

DATED, SIGNED AND DELIVERED THIS 13TH DAY OF JUNE 2024 IN OPEN COURT AT VOI.

GEORGE DULU

JUDGE

In the presence of:-

Alfred/Trizah – Court Assistants

Applicant in person

Mr. Sirima for State

