



**Christina v Republic (Petition E001 of 2024)
[2024] KEHC 16864 (KLR) (7 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 16864 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
PETITION E001 OF 2024
GMA DULU, J
OCTOBER 7, 2024**

BETWEEN

JULIUS JULAI CHRISTINA PETITIONER

AND

REPUBLIC RESPONDENT

RULING

1. Before me is a petition filed on 12th May 2024 by the convict Julius Julai Kristina under Article 22(1), 23(1), 25(c), 27, 28, 50(2)(p)(q), 160(1), 159(2) and 165 of *the Constitution* of Kenya as well as Section 216, 329 and 333(2) of the *Criminal Procedure Code* (Cap.75), and the reasoning in the case of Francis Karioko Muruatetu & Another =Versus= Republic (2017) eKLR.
2. Through the petition, the convict or petitioner herein seeks the following orders from this court:-
 1. That the court be pleased to review its sentence and grant a lenient definite sentence informed by the mitigation, and the unique facts and circumstances of the case pursuant to Article 50(2) (p)(q) of *the Constitution*.
 2. That this court be guided by the Judiciary Sentencing Guidelines (2016) and Section 216 and 329 of *Criminal Procedure Code* and developing jurisprudence on such matters.
 3. That the period spent in remand custody be computed into the eventual sentence awarded pursuant to the provisions of Section 333(2) of the CPC and pursuant to Ahmed Abolfathi Mohamed and Another =Versus= Republic (2018) eKLR and Vincent Sila Jona & 87 Others =Versus= Attorney General from the date of arrest on 29th August 2004.
 4. Any other orders the court deems fit, just and appropriate to be adduced for his sake.



3. The petition was canvassed through written submissions. In this regard, I have perused and considered the submissions filed by the petitioner as well as the submissions filed by the Director of Public Prosecutions.
4. I note that in the submissions filed by the petitioner, he stated that his death sentence was commuted to life imprisonment by the President on 5th September 2009; that he is now serving life sentence; that life sentence has been declared unconstitutional by the Court of Appeal in *Julius Kitsao Manyeso =Versus= Republic* – Criminal Appeal No. 12 of 2021; and that the petitioner had already been incarcerated for the last nineteen (19) years.
5. The petitioner has also submitted in mitigation, that he was a first offender; that he was misled by an accomplice; and that he was remorseful as he had realized his human mistake.
6. On their part, the Director of Public Prosecutions in their submissions, referred to the case of *Wanyeso =Versus= Republic* (2023) KECA, wherein the Court of Appeal dealt with a similar situation, and in particular paragraph 33 of the judgment, where the Court of Appeal stated as follows:-

“ 33. What has caused us concern is that those who are convicted for either long periods of time or for indeterminate sentences are left with no possibility of their conditions being reviewed since we do not have parole system in the country. Therefore, such persons are subjected to the vagaries of harsh prison conditions even when it is clear that their continued stay in prison can no longer be justified under any of the penological grounds and to the contrary, is detrimental to the health of the prisoner and a burden to the prison authorities who have to take care of people who may well be in a vegetative state.”
7. The learned Prosecuting Counsel Mr. Sirima for the Director of Public Prosecutions, concluded their submissions by urging this court to consider the years already spent by the petitioner in custody, to be adequate rehabilitation.
8. I have perused and considered the petition and submissions of the petitioner and submissions filed by the Director of Public Prosecutions. Having considered the petition and the submissions on both sides, in my view, this is a matter which can only attract sympathy from this court, and not the grant of the reliefs as sought herein.
9. The first reason is that, though the petitioner filed the petition and listed his grounds, he did not plead the specific Articles of *the Constitution* which were violated, nor stated how those Articles were violated against him, for this court to consider whether or not there were such violations in sentencing him. Thus this petition does not meet the standards and requirements listed in the case of *Anarita Karimi Njeri =Versus= Republic* [1979] eKLR, and *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013, as it is not specific as to which provisions of *the Constitution* were violated, and in what ways.
10. Secondly and more importantly, the petition herein has been rendered moot or academic by the recent decision of the Supreme Court in Petition No. E018 of 2023 *Republic =Versus= Joshua Gichuki Mwangi & Amicus Curiae Initiative for Strategic Litigation in Africa (ISLA) and Others*; delivered on 12th July 2024, a petition filed in the apex court by the Director of Public Prosecutions.
11. In the above recent decision, the Supreme Court held that the decisions currently being pronounced by courts on the basis of the case of Stanely Mururatetu, which are many, reviewing mandatory and minimum sentences, except for murder cases, are erroneous and not anchored in law. Thus, according to the Supreme Court, the review of sentences by courts based on the reasoning in the Muruatetu



case, can only be done in murder cases. In effect, this one being a case of robbery with violence, the mandatory death sentence which was commuted to life imprisonment cannot be reviewed by this court.

12. The Supreme Court being superior to the High Court, and in compliance with the doctrine of stare decisis, I am bound by the above recent decisions of the Supreme Court.
13. Maybe, as opined by the Supreme Court in the same case of *Republic =Versus= Joshua Gichuki Mwangi* (supra), even after the Supreme Court appreciated that statutory mandatory and minimum sentences have in the recent past been frowned upon and struck out by courts in many other jurisdictions as unconstitutional, the petitioner and others in Kenya will have to wait and persuade Parliament, under the doctrine of separation of powers, not the courts, to re-look into the issue of the nature of sentences in Kenya, as the Supreme Court's above judgment, is binding on this court and other courts in Kenya.
14. As for this petition, I find that the petition herein is unsustainable and cannot stand. I thus strike out the petition.

DATED, SIGNED AND DELIVERED THIS 7TH DAY OF OCTOBER 2024 IN OPEN COURT AT VOI VIRTUALLY.

GEORGE DULU

JUDGE

In the presence of:-

Maina/Trizah – Court Assistants

Petitioner – virtual

Mr. Sirima for State

