



**Nyaga & another v Republic (Criminal Revision E215 of 2024)
[2024] KEHC 12404 (KLR) (16 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12404 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL REVISION E215 OF 2024
HM NYAGA, J
OCTOBER 16, 2024**

BETWEEN

DICKSON NYAGA 1ST APPLICANT

JASON MURIIRA M'ITURA 2ND APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. By an undated notice of motion, the Applicants have moved the court for the following prayers:
 - i. That, the honourable court be pleased to certify this application as urgent and be heard on priority basis.
 - ii. That, may the Honourable court be pleased to grant orders that the period spent in remand custody as from 12.10.2009 to 06.02.2015 (5 years, 3 months and 21 days) be computed into the twenty (20) years and thirty (30) years sentence awarded by the Trial Court Pursuant to the provisions of section 333(2) of the *Criminal Procedure Code* and also pursuant to *Jona & 87 others v Kenya Prison Service & 2 others* (Petition 15 of 2020) [2021] KEHC 457 (KLR) and also pursuant to Paragraph 2.3.18 of the *Sentencing Policy Guidelines*, 2023.
 - iii. That, should the eventual computation result into a balance of three (3) years or less, may the honourable Court be pleased to grant me probation orders if their circumstances so fit.
 - iv. Any Other order that the Hon court deems fit to give in the interest of justice.
 - v. That, further grounds shall be adduced in the sworn supporting affidavit of Dickson Nyaga and Jason Muriira M'itura among other grounds to be adduced during the hearing of this application



2. The Applicants aver that they were initially charged before Tigania SRM's court in Criminal Case No 1193 of 2009 with the offence of robbery with violence contrary to section 296(2) of the [Penal Code](#). That they were convicted and sentenced to death by the trial court.
3. The Applicants further aver that they filed an application for re-sentencing being petition No E098 of 2023 before the High Court in Meru and the court set aside the death sentences and substituted them with custodial sentences of 20 and 30 years respectively.
4. The Applicants now aver that the court did not take account of the period that they had spent in remand in computing the sentence.
6. The Applicants admit that they went before the High Court vide Petition Number E098 of 2023. I have looked at the decision of my sister Justice T.W. Cherere delivered on 21st March 2024. After considering their Petition, the Judge gave the following orders.
 - (a) In the end Dickson Nyaga is resented to serve 20 (twenty) years from the date of his conviction on 22.1.2015
 - (b) John Muriira on the other hand sentenced to serve 30 (thirty) years from the date of his conviction on 22.1.2015
7. The Applicants' case is that the judge failed to take account of the time spent in custody.
8. I have considered the application and I came to the conclusion that this application cannot succeed for the following reasons.

Jurisdiction

- i. The decision that the Applicants seek to review orders made by a Judge of a concurrent Jurisdiction. Therefore, this court cannot purport to sit and review a decision of the Learned Judge. The applicants have the option of appealing to the Court of Appeal if they feel aggrieved by the said decision.
 - ii. The decision herein was delivered on 21st March 2024. It is common knowledge that on 12th July 2024, the Supreme Court in Republic vs Joshua Gichuki Mwangi:-

“I held that the decision in [Francis Karioko Muruatetu and others v Republic](#) [2017] eKLR cannot be applied to any other offence than murder.”
9. That being the case the Accused can count themselves lucky that they received lesser sentences prior to the said decision. By coming to this court again they are stretching their luck too far.
 10. For the reason that the Supreme Court has ruled on the nature of offences applicable under Muruatetu (Supra), this court lacks the Jurisdiction to entertain a sentence review, revision of any other form of application regarding the offence herein
 11. For these reasons, I find that this court lack the Jurisdiction to entertain the application and it is dismissed.
 12. Even assuming that the court is to look at the application on its merits, and this is just for arguments sake, the same would not succeed either.
 13. The court in resentencing the Applicants took account of all factors including the time spent in remand custody when it ruled that the sentences commence from 22nd January 2015.



14. As such, Section 333(2) of the *Criminal Procedure Code* (CPC) was fully complied with.
15. As I pen off, I would want to address a concern over the plethora of applications being made by convicts who are serving sentences in various prisons around the country.
16. It is now clear that the convicts are filing one application after another touching on their sentences. As matters stand, the decision in *Republic v Joshua Gichuki Mwangi* (*supra*) stands and it is to the effect that only convicts for the offence of murder, and who were not allowed to give their mitigation during the sentencing are entitled to apply for re-sentencing.
17. Thus the window for the application of Muruatetu is very narrow and cannot be used in respect to any other offences. That is the position until the Supreme court have determined the issue for other offences.
18. Consequently, I would strongly recommend and advise convicts, paralegal in prisons and prison authorities to read the said decision carefully and not to bring applications that are flawed in law. These applications are clogging the Judiciary case calendar for no good reasons.
19. The application stands dismissed for want of jurisdiction.

DATED, SIGNED AND DELIVERED AT MERU THIS 16TH DAY OF OCTOBER 2024.

H.M. NYAGA

JUDGE

In the presence of:

C/A: Kinoti

