



**Mghana v Republic (Miscellaneous Application E009 of 2023)  
[2023] KEHC 23393 (KLR) (11 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 23393 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
MISCELLANEOUS APPLICATION E009 OF 2023  
GMA DULU, J  
OCTOBER 11, 2023**

**BETWEEN**

**JOSPHAT MALUSHA MGHANA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant Josphat Malusha Mghana was tried and convicted on January 19, 2017 of manslaughter contrary to section 202 as read with section 205 of the Penal Code in Voi SPM Criminal Case No. 885 of 2014. He was sentenced to fifteen (15) years imprisonment.
2. He appealed to this court in Voi High Court Criminal Appeal No. 25 of 2017, which appeal was dismissed on May 29, 2018 and conviction and sentence affirmed.
3. He has now come to this court through the present application under article 22, 23, 25, 27, 28, 50(2) of the Constitution filed on January 19, 2023 seeking orders:-
  1. That the court be pleased to grant him probation order if his circumstances so fit since he has only two (2) years remaining to the end of his sentence.
  2. That the court be pleased to call for a confidential report from prison so as to be sufficiently informed about his rehabilitation.
  3. Any other orders that the court deems fit to give in the interest of justice.
4. This court ordered the filing of a sentence review report, and same was filed on March 10, 2023 signed by John Riungu Probation Officer Voi, in which it is concluded as follows:-

“...before you is a petitioner who is 43 years old. He prays for leniency and wishes to be considered for community rehabilitation for the remainder of his sentence which is about



20 months. However, his security is not guaranteed if he is considered especially from the deceased members of the community. In view of the prevailing scenario, a review of his sentence to a community rehabilitation is respectfully not recommended.”

5. The applicant and the Director of Public Prosecutions filed written submissions to the application, with the applicant urging this court to grant him the prayers sought, while the Director of Public Prosecutions states that this court has no jurisdiction to entertain the present application in which the applicant alleges violation of his constitutional rights, which is not supportable by any evidence, and secondly, the statutory sentence for the offence of manslaughter was life imprisonment.
6. This application will fail because, the sentence review report indicates that reviewing the appellant’s sentence to production could as well endanger his own life. Thus reviewing his sentence will not be in his favour.
7. Secondly, reviewing his sentence to probation will call for supervision by the Probation Officer, whom in this case, is not able to do so because of the peculiar circumstances of the community who are hostile. The applicant is therefore not suited for review of sentence.
8. I thus disallow the application, and decline to grant any of the orders sought. The application is hereby dismissed.

**DATED, SIGNED AND DELIVERED THIS 11<sup>TH</sup> DAY OF OCTOBER 2023 AT VOI IN OPEN COURT.**

**GEORGE DULU**

**JUDGE**

**In the presence of:-**

Alfred – Court Assistant

Ms. Ondeyo for State

Applicant

