

REPUBLIC OF KENYA

HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS CRIMINAL DIVISION

MISC CR APPL 131 OF 2016

JOSEPH VASI MUTUKU.....APPLICANT

VERSUS

REPUBLICRESPONDENT

RULING

1. The applicant is seeking for review of sentence pursuant to the provisions of; section 333(2) of the Criminal Procedure Code (Cap 75) Laws of Kenya. The historical facts of the matter reveal that, he was convicted of the offence of robbery with violence contrary to section 296(2) of the Penal Code (Cap 63) Laws of Kenya and sentenced to death, vide Chief Magistrates Criminal Case Number 4585 of 2006 at Kibera Law Court. 431

2. He was also charged with the other charges of; rape contrary to section 3(3) Sexual Offences Act No. 3 of 2006 and stealing from the person contrary to section 279 (a) of the Code. The sentence on these other charges was held in abeyance due to the death sentence on the charge of Murder. However, the applicant appealed against the conviction and sentence vide High Court criminal appeal number 280 of 2011. The appeal was heard and determined, being dismissed in its entirety.

3. The applicant pursued the matter in the Court of Appeal vide a Criminal Appeal No. 21 of 2016. The appeal was heard and determined on 24th January 2020, whereupon conviction was upheld but the appeal on sentence was allowed, in that, the death sentence was substituted with the following sentences; a sentence of twenty-five (25) years imprisonment on count 1, fifteen (15) years imprisonment on the charge of rape and five (5) years for stealing from the person.

4. The Court of Appeal clearly stated that: *“The sentence shall run concurrently and take effect from 27th October 2011, when, the appellant was sentenced by the trial Court.*

5. In view of the aforesaid, I find that, he Court of Appeal having dealt with the matter, and upheld the conviction and imposed the pronouncing itself on sentence the Court of Appeal stated as follows: -

“We have considered whether given the flaws in sentencing, we should remit this matter to the lower court for re-sentencing. However, given the fact that the appellant has been in custody for 13 years, we believe it would be fair and just for this court to finalize this matter by imposing the sentence.”

6. It is therefore clear that, the period in custody was considered before the Court of Appeal meted the sentence. Furthermore, the provisions of; sections; 332(2) and 362 of Criminal Procedure Code do not clothe the High Court with jurisdiction to either consider the period spent in custody when dealing with a sentence imposed by the Court of Appeal.

7. The High court does not have supervisory authority over the Court of Appeal or revisionary power over that court. The resultant of the aforesaid is that, the application herein has no merit and I order it dismissed and order file closed.

It is so ordered.

DATED, DELIVERED VIRTUALLY AND SIGNED ON THIS 5TH DAY OF OCTOBER 2021.

GRACE L. NZIOKA

JUDGE

READ IN THE PRESENCE OF APPLICANT

MS KIBATHI FOR RESPONDENT

EDWIN OMBUNA – COURT ASSISTANT