



**Juma alias Elijah v Republic (Criminal Miscellaneous Application
E004 of 2024) [2025] KEHC 15357 (KLR) (29 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15357 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CRIMINAL MISCELLANEOUS APPLICATION E004 OF 2024**

**JN KAMAU, J
OCTOBER 29, 2025**

BETWEEN

WILSON JUMA ALIAS ELIJAH APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Introduction

1. The Applicant herein was charged with the offence of robbery with violence contrary to Section 296(2) of the Penal Code Cap 63 (Laws of Kenya) on Count I and the offence of gang rape contrary to Section 10 of the *Sexual Offences Act* Cap 63A (Laws of Kenya) on Count II. He was also charged with an alternative charge of indecent act contrary to Section 11(A) of the *Sexual Offences Act*. He was convicted of both Counts and sentenced to death on Count I and three (3) years imprisonment on Count II. The Trial Court suspended the sentence on Count II in view of the death sentence.
2. Being aggrieved by the said decision, he lodged a first appeal at Kakamega HCCRA No 55 of 2016. The court allowed his appeal by upholding his conviction and after hearing his mitigation. It substituted his death sentence with twenty (20) years imprisonment. It also set aside his sentence of three (3) years on Count II on the ground that it was illegal and substituted it with fifteen (15)(sic) years imprisonment. He stated that both sentences were to run consecutively.
3. On 15th January 2024, he filed his Notice of Motion dated 18th October 2023 seeking review of his sentence. He pleaded with this court to make an order that his sentences should run concurrently pursuant to Section 12 and 14 of the Criminal Procedure Code and Section 37 of the Penal Code.
4. He asserted that he was a first offender and profusely remorseful of having committed the offence. He averred that he had reformed, was rehabilitated and socially re-adapted and, therefore did not still



require a deterrent sentence. He argued that it was his absolute right by law to be given a least severe punishment pursuant to Articles 25(c) and 50(2)(p) of the *Constitution* of Kenya, 2010.

5. His Written Submissions were dated 26th August 2024 and filed on 6th January 2025 while those of the Respondent were dated 13th February 2025 and filed on 15th February 2025. The Ruling herein is based on the said Written Submissions that both parties relied upon in their entirety.

Legal Analysis

6. The Applicant placed reliance on several cases among them the case of James Kariuki Wagana vs Republic[2018]eKLR where it was held that the death sentence should be reserved for the highest and the most heinous levels of robbery with violence or murder and the case of Willy Joel Makudo vs Republic[2019]eKLR where the court sentenced the appellant therein to seven (7) years imprisonment noting that that would permit his rehabilitation and early release to enable him participate in nation building and taking care of his family.
7. In his mitigation, he argued that although he and others were armed with pangas and rungas, they did not injure anybody and that the stolen items were modest at Kshs 14, 120/= only. He added that the only violence that was meted was gang rape which did not cause death or grievous harm hence he should be given a lesser sentence. He pleaded with court to consider that he was a first offender.
8. He pointed out that he was twenty-two (22) years old during the incident and had an infant family that depended on him. He was emphatic that what seemed to be the primary justification for detention at the start of the sentence could not be so after his lengthy period of eight (8) years into service of the sentence and that it was only by carrying out a review of the justification for continued detention at this point in the sentence that the shifts or factors could be properly evaluated.
9. On its part, the Respondent submitted that his sentence was lawful and proper. It placed reliance on the case of Republic vs Jagani & Another (2001) KLR 590 where it was held that the purpose of sentence was usually to disapprove unlawful conduct and assist in rehabilitation of offenders. It argued that the sentence meted out on the Applicant was to instil a sense of responsibility for his actions and also allow for his rehabilitation.
10. It contended that this court lacked the jurisdiction to review the sentence that was imposed on him having already appealed to this court. It submitted that the law was that this court could only exercise the jurisdiction conferred upon it by the *Constitution* and statute. It invoked Article 165(3) and (6) of the *Constitution* of Kenya, 2010 and argued that this court could not supervise superior courts.
11. It further placed reliance on the case of John Kagunda Kariuki vs Republic [2019]eKLR where it was held that the applicant could not return to the High Court for review of his sentence after his appeal had already been heard and determined by the same court but that he was at liberty to make an argument for reduced sentence at the Court of Appeal.
12. This court checked the Kenya Law Reports Website and noted that the Applicant herein lodged an appeal at the Court of Appeal Juma alias Elijah vs Republic (Criminal Appeal 178 of 2019) [2024] KECA 1695 (KLR) (22 November 2024) (Judgment) which indicated that the Applicant's sentence for the offence of robbery was reduced from the death sentence to thirty-five (35) years imprisonment and not to fifteen (15) years imprisonment as he had claimed in his application and that the sentence of three (3) years for the for the offence of gang rape was enhanced to fifteen (15) years imprisonment. The High Court had ordered that the sentence would run concurrently.
13. Notably, the Court of Appeal upheld the decision of the High Court of Kenya at Kakamega on both conviction and sentence. This is a fact that the Applicant failed to disclose. It took the ingenuity of



this court to ascertain the correct position of his previous matters. It was, therefore, clear that he had approached this court with unclean hands.

14. As the decision of the Court of Appeal which upheld the High Court's decision was binding on this court and it had reduced the death sentence to a determinate sentence, the court could not sit on review or appeal of the same. The only option that the Applicant had was to approach the Supreme Court or Court of Appeal for redress, if at all.
15. In the premises, this court agreed with the Respondent's argument that it had no jurisdiction to handle this application.

Disposition

16. For the foregoing reasons, the upshot of this court's decision was that the Applicant's Notice of Motion application dated 18th October 2023 and filed on 15th January 2024 was not merited and the same be and is hereby dismissed.
17. It is so ordered.

DATED AND DELIVERED AT VIHIGA 29TH DAY OF OCTOBER 2025

J. KAMAU

JUDGE

