



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA COUNTY

COURT NAME: MOMBASA HIGH COURT

CASE NUMBER: HCCRMISCAPPL/E098/2024

MOHAMED BAKARI SULEIMAN AND HUSSEIN HAMISI MOHAMED VS THE REPUBLIC

RULING

REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA

MISC. CRIMINAL APPLICATION NO. E098 OF 2024

HUSSEIN HAMISI MOHAMED..... 1ST APPLICANT
MOHAMED BAKARI SULEIMAN..... 2ND APPLICANT

VERSUS

REPUBLIC..... RESPONDENT

RULING

(Revision of sentence in Mombasa High Court Criminal Appeal No. 209 of 2009 and Mombasa Magistrate’s Criminal Case No. 3764 of 2007)

The homemade Notice of Motion dated 15th July 2024 filed by the Applicants, **Hussein Hamisi Mohamed** and **Mohamed Bakari Suleiman**, seeks an order for review of their sentence.

The Applicants were charged, convicted, and sentenced to **life imprisonment** for the offence of **robbery with violence contrary to Section 295 as read with Section 296(2) of the Penal Code**, in **Mombasa Magistrate’s Criminal Case No. 3764 of 2007**.

The facts were that on **17th November 2007**, at about **0500 hours** at **Majengo, Mombasa District**, the Applicants, while armed with offensive weapons namely pangas, robbed **William Chagusia Luvanga** of **Ksh. 300** and, immediately before or after the robbery, used actual violence



on the said complainant.

Being dissatisfied with the conviction and sentence, they appealed in **Mombasa HCCR Appeal No. 209 of 2009**, which was dismissed. Their death sentence was later commuted to **life imprisonment** by **His Excellency the President**. They now seek a review of that sentence to a lesser term.

I have carefully considered the application, the supporting affidavit, and the sentence review reports for both Applicants dated **2nd October 2025**. The issue for determination is whether this Court has jurisdiction to review the Applicants' sentence and, if so, whether the application has merit.

Jurisdiction of the Court

It is trite law that the High Court cannot review, alter, or set aside a sentence imposed or upheld by another judge of concurrent jurisdiction after an appeal has been concluded. This Court therefore lacks jurisdiction to review or interfere with such a decision.

This principle is grounded in the **doctrine of stare decisis** and the **hierarchy of courts**, which promote consistency and finality in judicial proceedings.

In **Joseph Nduvi Mbuvi v Republic [2019] eKLR**, the Court of Appeal reaffirmed that a High Court judge cannot sit on appeal or review a decision of another judge of the same court, noting that doing so would undermine judicial comity and create uncertainty in the administration of justice.

Similarly, in **Republic v Karisa Chengo & 2 Others [2017] eKLR**, the **Supreme Court** held that the High Court cannot revisit or vary a sentence imposed by another judge of the same court unless there exists a specific statutory provision permitting such review or an appeal is lodged to a higher court.

Consequently, this Court finds that the request to review the life sentence cannot be entertained as it would amount to sitting on appeal over a decision of a judge of equal standing. The appropriate recourse lies in an appeal to the **Court of Appeal** pursuant to **Article 164(3)** of the **Constitution of Kenya, 2010**.

On the Presidential Commutation of Sentence

The commutation of a death sentence to life imprisonment by the President, under the **Power of Mercy Act**, does not reopen a case for judicial review by the High Court.

In **Julius Kitsao Manyeso v Republic [2021] eKLR**, the Court of Appeal clarified that the exercise of the prerogative of mercy is an **executive** function distinct from **judicial sentencing** and does not vest jurisdiction in the High Court to revisit or vary such a sentence.

Scope of Revisional Powers

Under **Section 364 of the Criminal Procedure Code**, this Court has supervisory and revisional jurisdiction over subordinate courts, including power to vary, enhance, or reverse orders other than acquittals. However, such powers do not extend to decisions of the High Court or to matters already concluded by a court of concurrent jurisdiction.



On Sentencing

The Applicants were convicted of **robbery with violence** under **Section 296(2)** of the **Penal Code**, which prescribes the **mandatory death penalty** upon conviction.

The **Supreme Court**, in **Republic v Mwangi; Initiative for Strategic Litigation in Africa (ISLA) & 3 Others (Amicus Curiae) (Petition E018 of 2023) [2024] KESC 34 (KLR)**, reaffirmed the constitutionality of mandatory minimum sentences and held that trial courts must impose them unless declared unconstitutional by competent authority.

The **Court of Appeal**, in **Charles & Another v Republic (Criminal Appeal 38 of 2019) [2024] KECA 1902 (KLR)**, acknowledged the binding nature of that decision, affirming that courts have **no discretion** to impose sentences below the statutory minimum in such offences.

Further, in **Republic v Ayako (Petition E002 of 2024) [2025] KESC 20 (KLR)**, the Supreme Court reiterated that only Parliament may define the scope of a **life sentence**, and appellate courts lack jurisdiction to substitute it with a fixed term.

Accordingly, the sentence imposed under **Section 296(2)** is both **lawful and proportionate** to the gravity of the offence.

Findings

Having reviewed the sentence review report dated **2nd October 2025**, the Court finds **no exceptional circumstances** or mitigating factors to warrant interference with the lawful sentence imposed.

Conclusion

In light of the foregoing, I find that the **Notice of Motion dated 15th July 2024** lacks merit. It is hereby **dismissed in its entirety**.

DELIVERED, DATED AND SIGNED AT MOMBASA this 13th day of November 2025.

Ruling delivered through **Microsoft Teams Online Platform**.

WENDY KAGENDO MICHENI
JUDGE

In the presence of:

APPLICANT

RESPONDENT : **MR NGIRI**

COURT ASSISTANT: **MS BEBORA**

SIGNED BY/FOR:
HON. LADY JUSTICE WENDY MICHENI





THE JUDICIARY OF KENYA.
MOMBASA HIGH COURT
HIGH COURT CRIMINAL
DATE: 2025-11-13 11:58:18

