



**Navulu v Republic (Criminal Miscellaneous Application E002 of 2024)
[2025] KEHC 17606 (KLR) (24 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17606 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CRIMINAL MISCELLANEOUS APPLICATION E002 OF 2024
JN KAMAU, J
NOVEMBER 24, 2025**

BETWEEN

ALEX NAVULU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant herein was charged with others with the offence of robbery with violence contrary to Section 296(2) of the Penal Code on Count 1 and the offence of gang rape contrary to Section 10 of the *Sexual Offences Act* No 3 of 2006 on Count III. He was also charged with an alternative charge of the offence of committing an indecent act with an adult contrary to Section 11(A) of the *Sexual Offences Act*. He was convicted of the charge of robbery with violence and sentenced to death. He was acquitted of the offence of gang rape.
2. Being aggrieved by the said decision, he lodged a first appeal at the High Court in Kakamega HCCRA No 28 of 2018 whereby the court substituted his death sentence with twenty-three (23) years imprisonment.
3. On 8th January 2024, he filed a Notice of Motion application of even date seeking a review of his sentence. He relied on Section 26(2)(p) of the Penal Code Cap 63 (Laws of Kenya) and Article 50(2) (p) of *the Constitution* of Kenya, 2010. He averred that he had reformed, rehabilitated and was socially re-adapted.
4. His Written Submissions were dated 30th April 2024 and filed on 2nd May 2025 while those of the Respondent were dated and filed on 25th April 2024 The Ruling herein is based on the said Written Submissions which parties relied upon in their entirety.



Legal Analysis

5. The Applicant submitted that he was arrested at the age of twenty-nine (29) years and had spent nine (9) years in prison. He pointed out that he was, therefore, still a young man with a promising future whose dreams would be shattered with the long incarceration. He added that he left behind a young family that was living from hand to mouth and needed his efforts in providing for basic needs. He urged the court to consider his age and the period spent in custody and review his sentence based on the fact that his relatives, friends and neighbors were willing to embrace his resettlement.
6. He contended that he was a first offender had maintained discipline in prison. He asserted that he had undergone transformative and reformatory activities authored by NITA in Grade III in masonry with an ordinary pass amongst other Biblical studies such as Emmaus Bible Studies and the Prisoner's Journey and that he had been awarded certificates of completion. He sought for the court's leniency.
7. On its part, the Respondent placed reliance on the case of Republic vs Jagani & Another (2001) KLR 590 where it was held that the purpose of sentence was to assist in rehabilitation of the offenders. It contended that the sentence that was imposed upon the Applicant was to instill a sense of responsibility for his actions and also allow for his rehabilitation.
8. It further argued that this court lacked the jurisdiction to review the sentence imposed upon the Applicant having appealed to this court. In that regard, it cited the case of John Kagunda Kariuki vs Republic[2019]eKLR where it was held that as the applicant's appeal had already been heard at the High Court, he could not go back for review of the sentence as he had the liberty to make an argument for reduced sentence at the Court of Appeal.
9. It invoked Article 165 of *the Constitution* and Section 362 and 364 of the Criminal Procedure Code and argued that the powers of the High Court on revision were to be exercised only over subordinate courts and not over the High Court with respect to its own decisions. It added that it was trite that where an accused person was aggrieved by the court's decision, he could either appeal or seek review of the sentence but that he could not appeal and seek review at the same time. It urged the court to dismiss the Applicant's appeal for lack of merit.
10. In its decision that was delivered on 30th April 2025, this court relied on the case of Mbugua & 6 Others vs Attorney General & 3 Others (Constitutional Petition E002 & E003 of 2024 (Consolidated)) [2025] KEHC 1248 (KLR) (24 February 2025) (Judgment) wherein this very court held that it was discriminatory to deny offenders who had been convicted of the offence of robbery with violence and attempted robbery with violence the right to have their mitigation during trial considered, while the non-capital offenders enjoyed that right.
11. The purport of the said decision was to allow persons who had been convicted of robbery with violence to serve determinate sentences. As the High Court had already reduced the Applicant's death sentence to twenty-three (23) years, this court found the same to have sufficed for purposes of him not having been discriminated against. This court could not, therefore, review a determinate sentence as that was now within the purview of the Court of Appeal.



12. As regards the period the Applicant spent in remand while his trial was ongoing, this court had due regard to Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya) which stipulates that:-

“Subject to the provisions of section 38 of the Penal Code (Cap. 63) every sentence shall be deemed to commence from, and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this Code.

Provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody (emphasis court)”.

13. Further, Clause 4.6.20 (ix) of the Judiciary Sentencing Policy Guidelines provides that:-

“The Sentencing Court shall be guided by the sentencing principles and objectives set out in Part I of these the Guidelines in all resentencing hearings. The following mitigating factors were set out by the Supreme Court as particularly relevant in a resentencing hearing:...

(ix) Time already spent in prison by the convict...”

14. The duty to take into account the period an accused person had remained in custody before sentencing pursuant to Section 333(2) of the Criminal Procedure Code was restated by the Court of Appeal in the case of Ahamad Abolfathi Mohammed & Another vs Republic[2018]eKLR.

15. A reading of the High Court’s decision in Michael Musungu & 4 Others vs Republic [2019] KEHC 1102 (KLR) showed that the court took into account the period the Applicant had spent in remand during trial. The Learned Judge therein rendered himself as follows:-

“In the circumstance of this case, having considered the mitigation of the appellants, all of them are hereby sentenced to serve a term of twenty-three (23) years in prison from the date of arrest.”

16. As the appellate court was of equal and competent jurisdiction as this court, this court could not, therefore, purport to review and/or sit on appeal on the said decision. The only option that the Applicant had was to seek recourse from the Court of Appeal.

Disposition

17. For the foregoing reasons, the upshot of this court’s decision was that the Applicant’s Notice of Motion application dated and filed on 8th January 2024 was not merited and the same be and is hereby dismissed.

18. It is so ordered.

DATED AND DELIVERED AT VIHIGA THIS 24TH DAY OF NOVEMBER 2025

J. KAMAU

JUDGE

