



**Gichuki v Republic (Criminal Revision E027 of 2024)  
[2024] KEHC 9406 (KLR) (30 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9406 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
CRIMINAL REVISION E027 OF 2024  
DKN MAGARE, J  
JULY 30, 2024**

**BETWEEN**

**JOSEPH KAMAU GICHUKI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. This Applicant had been sentenced to death. He erroneously indicated that the death penalty was declared unconstitutional. It was not. The Supreme Court in the case of Muruatetu held as follows:-

“(52) We are in agreement and affirm the Court of Appeal decision in Mutiso that whilst the Constitution recognizes the death penalty as being lawful, it does not provide that when a conviction for murder is recorded, only the death sentence shall be imposed. We also agree with the High Court’s statement in Joseph Kaberia Kahinga that mitigation does have a place in the trial process with regard to convicted persons pursuant to Section 204 of the Penal Code. It is during mitigation, after conviction and before sentencing, that the offender’s version of events may be heavy with pathos necessitating the Court to consider an aspect that may have been unclear during the trial process calling for pity more than censure or on the converse, impose the death sentence, if mitigation reveals an untold degree of brutality and callousness.

(53) If a Judge does not have discretion to take into account mitigating circumstances it is possible to overlook some personal history and the circumstances of the offender which may make the sentence wholly disproportionate to the accused’s criminal culpability. Further, imposing the death penalty on all individuals convicted of murder, despite the fact that the crime of murder can be committed with varying degrees of gravity and



culpability fails to reflect the exceptional nature of the death penalty as a form of punishment. Consequently, failure to individualise the circumstances of an offence or offender may result in the undesirable effect of 'overpunishing' the convict.

(54) A fair trial has many facets, and includes mitigation and, the right to appeal or apply for review by a higher Court as prescribed by law. Counsel for the petitioners and amici curiae both urged that the mandatory death sentence denied the petitioners enjoyment of their rights under Article 50 (2) (q) of *the Constitution*. On this issue, we are persuaded by the decision in *Edwards v The Bahamas* (Report No. 48/01, 4<sup>th</sup> April 2001) which was decided by the Inter-American Commission on Human Rights. In that matter, Michael Edwards was convicted of murder and a mandatory death sentence imposed on him

2. The Supreme Court re-directed sentence and re-hearing for such cases. The Applicant has been in custody since 1992, wherein he was convicted for robbery with violence and sentenced to death. He has been in custody from 9/9/1992, a period of 32 years.
3. Even if I was to equate with life he will have served his entire term. Had he been sentenced to 48 years, together with his good behavior he could be out for now. It does not serve any useful purpose to continue holding him.
4. In the circumstances, I set aside the death sentence and replace with the period served. The Applicant shall be released forthwith unless otherwise lawfully held.

**DELIVERED, DATED AND SIGNED AT NYERI ON THIS 30<sup>TH</sup> DAY OF JULY, 2024.**

Ruling delivered through Microsoft Teams Online Platform.

**KIZITO MAGARE**

**JUDGE**

In the presence of:-

Ms. Kaniu for the State

Applicant present

Court Assistant – Jedidah

