



REPUBLIC OF KENYA



**KENYA LAW**  
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**Khalwale v Republic (Criminal Application E102 of 2024)  
[2024] KEHC 10071 (KLR) (12 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10071 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CRIMINAL APPLICATION E102 OF 2024  
RE ABURILI, J  
AUGUST 12, 2024**

**BETWEEN**

**ERNEST AMANYA KHALWALE ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(From the original conviction and sentence in Maseno PM Criminal  
Case No. 1062 of 2007 by Hon A.G.Nangea, Ag SRM on 14/3/2007)*

**RULING**

1. The applicant herein is a convict of robbery with violence. He was sentenced to death. He was also convicted and sentenced to serve 25 years imprisonment for the offence of rape contrary to section 140 of the *Penal Code*. This was on 14<sup>th</sup> March, 2007.
2. In his application subject of this ruling, he claims that that he appealed but the appeal was dismissed vide HCRA 46 of 2007. That he appealed to the Court of Appeal but that he withdrew the appeal No 20 of 2020 based on *Muruatetu* decision specifying that the decision was only applicable to murder cases.
3. He now prays for sentence rehearing of his mitigation on account that the death sentence was unconstitutional. He has not said whether the 25 years imprisonment was lawful or not. Further, I observe that the death sentence was commuted to life imprisonment
4. The applicant deposes that he is reformed and has a young family which depends on him for their livelihood and that their dreams are shattered. That his wife remarried due to the applicant's long incarceration, leaving the children to languish.
5. I have considered the application which is coming almost twenty years.



6. I have considered the application. I find no material to interfere with the sentence which was imposed noting that the applicant had the opportunity to ventilate on appeal to the High Court and the Court of appeal.
7. The application is declined and dismissed.
8. Signal to issue.
9. This file is closed.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 12<sup>TH</sup> DAY OF AUGUST, 2024**

**R. E. ABURILI**

**JUDGE**

