



**David v Republic (Miscellaneous Criminal Application 2 of 2024)  
[2025] KEHC 2377 (KLR) (24 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2377 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
MISCELLANEOUS CRIMINAL APPLICATION 2 OF 2024  
AN ONGERI, J  
FEBRUARY 24, 2025**

**BETWEEN**

**HAMISI MBELA DAVID ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The two Applicants in the consolidated Miscellaneous Criminal Cases E201 of 2023 *Hamisi Mbela David v Republic* and E012 of 2024 – *David Anyila v Republic* filed similar applications seeking review of the death penalty imposed upon them which have since been commuted to life imprisonment.
2. The two Applicants were charged with the offence of robbery with violence contrary to Section 296(2) of the *Penal Code*.
3. The trial court found the two guilty as charged and sentenced them to death.
4. They appealed to the High Court and the appeals were dismissed.
5. The two filed a second appeal to the Court of Appeal which was equally dismissed on 16<sup>th</sup> March, 2012.
6. The sentence was commuted to life imprisonment by the President.
7. The parties filed written submissions which I have duly considered. The applicants submitted that they spent 20 years in custody since their arrest and that the same is sufficient and they urged the court to set them free not only to decongest Shimo La Tewa prison but also taking into account their age.
8. The prosecution submitted that the applicants were sentenced to death by the trial court. Their appeal to the high court and court of appeal were dismissed and it was found that the sentence that was passed by the trial court was legal.



9. Further, the respondent submitted that the applicants have been incarcerated for more than 20 years since their arrest and as per the sentencing guidelines, rehabilitation is one of the core objectives of sentencing.
10. The prosecution's position is that they have no objection if the applicants' sentence being reviewed from life imprisonment to 25 years to commence from the date of arrest.
11. In the case of *Muruatetu & another v Republic; Katiba Institute & 4 others (Amicus Curiae)* (Petition 15 & 16 of 2015) [2021] KESC 31 (KLR) (6 July 2021) (Directions) the supreme court held that;

“ 15. To clear the confusion that exists with regard to the mandatory death sentence in offences other than murder, we direct in respect of other capital offences such as treason under section 40 (3), robbery with violence under section 296 (2), and attempted robbery with violence under section 297 (2) of the *Penal Code*, that a challenge on the constitutional validity of the mandatory death penalty in such cases should be properly filed, presented, and fully argued before the High Court and escalated to the Court of Appeal, if necessary, at which a similar outcome as that in this case may be reached. Muruatetu as it now stands cannot directly be applicable to those cases.”

12. In the case of *William Oongo Arunda (Hitherto referred to as Patrick Oduor Ochieng) v Republic* (Criminal Appeal 49 of 2020) [2022] KECA 23 (KLR) (21 January 2022) (Judgment) it was held as follows;

“ 30. As regard sentence, and as already noted, on 6th July 2021 the Supreme Court in Francis Karioko Muruatetu & another vs. Republic; Katiba Institute & 5 others (Amicus Curiae) directed that the judgment of the Court in that case cannot be the basis for stating that all provisions of the law prescribing mandatory or minimum sentences are unlawful. The implication thereof is that upon conviction, courts must pass the mandatory sentences that are prescribed. We are therefore unable to interfere with the sentence meted out by the trial court and upheld by the High Court in this matter.”

13. I find no basis to interfere with the decision of the appellant court in this case. It is not in dispute that the applicants' appeal to the high court and court of appeal were both dismissed and it was found that the sentence that was passed by the trial court was legal.
14. I dismiss the consolidated applications for review of the sentence since I have no jurisdiction to review the sentence meted against the applicants.

**DATED, SIGNED AND DELIVERED THIS 24<sup>TH</sup> DAY OF FEBRUARY 2025 VIRTUALLY VIA MT AT VOI.**

**ASENATH ONGERI**

**JUDGE**

In the presence of:-

Prosecutor: Mr. Ngigi

Court Assistant: Maina

The Applicant present at Shimo la Tewa Prison

