



REPUBLIC OF KENYA



KENYA LAW
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**Kikava v Republic (Criminal Revision E098 of 2024)
[2025] KEHC 8933 (KLR) (24 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 8933 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CRIMINAL REVISION E098 OF 2024
AN ONGERI, J
FEBRUARY 24, 2025**

BETWEEN

VICTOR MUTUA KIKAVA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant was sentenced to death for the offence of robbery with violence contrary to Section 296(2) of the [Penal Code](#) by the trial court.
2. The Applicant appealed to the High Court and the appeal was dismissed and both the conviction and sentence were upheld.
3. The Applicant has now applied to this court seeking review of the sentence.
4. Both the Applicant and the prosecution filed submissions as follows:- The applicant submitted that he seeks a review of sentence on the grounds that a life sentence is unconstitutional as it deprives the trial magistrates and judges their discretion to award appropriate sentences to each case.
5. The appellant submitted that he is a first offender and is remorseful as he recognizes that he caused pain to the victim and his family. The applicant apologizes to the victim's family, the society and the court. The applicant indicated that he has used his time in prison to better himself. He was arrested when he was 31 years old and has been in custody for over 17 years. The applicant urged the court to consider his advanced age and review his sentence and accord him with another chance. The applicant pointed out that within the time he has been in prison he has achieved a certificate in building and construction Grade 2 and 3.
6. The prosecution alternatively submitted that the issue of sentence has been dealt with exhaustively and therefore the court does not have jurisdiction to review the sentence. The prosecution argued that the



applicant seeks the court to sit on appeal on the decision made by a court of concurrent jurisdiction and a higher court. it was the prosecution position that the application herein is an abuse of court process and should consequently be dismissed.

7. The sole issue for determination is whether the death penalty which has since been commuted to life imprisonment should be revised.
8. 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.”

9. 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 v 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.”

10. I find no basis to interfere with the decision of the appellant court in this case. It is not in dispute that the applicant’s 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.
11. I dismiss his application for review of his sentence.

DATED, SIGNED AND DELIVERED THIS 24TH FEBRUARY 2025 VIRTUALLY VIA MT AT VOI.

ASENATH ONGERI

JUDGE

In the presence of:-

Prosecutor: Mr. Ngigi

Court Assistant: Maina

The Applicant present at Manyani

