



REPUBLIC OF KENYA



**Kamau v Republic (Miscellaneous Criminal Case E100 of 2024)  
[2025] KEHC 2050 (KLR) (11 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2050 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
MISCELLANEOUS CRIMINAL CASE E100 OF 2024  
JM NANG'EA, J  
FEBRUARY 11, 2025**

**BETWEEN**

**THOMAS IRUNGU KAMAU ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant was charged with and convicted of the offence of various counts of Violent Robbery Contrary to Section 296(2) of the *Penal Code* before the Chief Magistrate's Court in Narok. He was sentenced to suffer death in Criminal Case Number 786 of 2002 as provided by the law. His appeal to this court was unsuccessful hence this application. A second appeal could not be lodged because an unspecified file got lost.
2. The Applicant avers vide affidavit in support of the application that the Supreme Court had declared mandatory death sentences as unconstitutional and so he applies for re-sentencing in light of that pronouncement.
3. The Applicant further pleads that once alternative sentences are meted out by this court the same be ordered to be served out concurrently arguing that the offences were committed in the course of the same transaction. The court is also urged to factor in the period the Applicant spent in remand custody.
4. The Applicant filed written submissions while the Prosecution Counsel did not make submissions in reply.
5. The Applicant rightly submits that pursuant to the recent Supreme Court's case of Joshua Gichuki Mwangi & Others in Petition No. E018 of 2023, any challenge on the Constitutional validity of mandatory sentences for other capital offences, other than murder in respect of which the apex court has already delivered itself, is welcome for determination by the High Court and the Court of Appeal



where necessary, in the event of an appeal. This challenge is to be mounted in a proper substantive Constitutional Petition.

6. In line with the decision in Joshua Gichuki Mwangi supra, the Applicant proceeded to make detailed submissions herein on what he considers as unconstitutionality of a mandatory death sentence for violent robbery charge of which he had been convicted in the Subordinate Court.
7. In my view the Applicant cannot raise such a weighty constitutional issue in a Miscellaneous Criminal Application such as before the court. As held by the Supreme Court in the case of the said Joshua Gichuki Mwangi, a proper substantive Constitutional Petition should be filed in the High Court and where necessary, escalated to the Court of Appeal. Because of the importance of such a Petition, proper Respondents would include the Director of Public Prosecution, the Attorney General and other Interested Parties as may be identified.
8. This court will not therefore treat this application as the Petition contemplated by the Supreme Court in its cited decision.
9. For the reason given hereinabove that death sentences in violent robbery cases have not been invalidated, this court has no jurisdiction to mete out a different sentence. The procedure for challenging mandatory death sentences in capital offences, other than murder has been explained in the case of Joshua Gichuki Mwangi above referred to. Considering the nature of the sentence imposed by the lower court, this court cannot direct the sentences to be served concurrently as prayed. Neither can the court consider the provisions of Section 333(2) of the [Criminal Procedure Code](#).

**RULING DELIVERED THIS 11<sup>TH</sup> DAY OF FEBRUARY, 2025 IN THE PRESENCE OF:**

**J. M. NANG'EA, JUDGE.**

Ms Sang for the DPP

Applicant, present

Court Assistant (Jeniffer)

