



**Kobia v Republic (Criminal Miscellaneous Application E218 of 2024)
[2025] KEHC 2456 (KLR) (11 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2456 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL MISCELLANEOUS APPLICATION E218 OF 2024**

**JM NANG'EA, J
FEBRUARY 11, 2025**

BETWEEN

JOSHUA KOBIA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant and others were jointly charged with and convicted of the offence of Violent Robbery Contrary to Section 296(2) of the *Penal Code* before the Magistrate's Court in Narok (File No. 76 of 2002). An appeal to this court was dismissed and a second appeal was not preferred. He was sentenced in the lower court to suffer death but the President later commuted the sentence to life imprisonment.
2. The Applicant now craves re-sentencing for reasons stated in his affidavit supporting the application.
3. The Applicant avers that he deserves to be re-sentenced having already served a long prison term of 23 years. He expresses his remorse and says he has reformed through the benefit of correctional facilities. The court is also urged to discount the Applicant's remand period pursuant to the provisions of Section 333(2) of the *Criminal Procedure Code*.
4. The Prosecution Counsel neither filed a reply nor submissions. The Applicant has not also filed submissions.
5. The application appears defective and it is supported by a purported affidavit which is not witnessed or commissioned by a Commissioner for Oaths as required under the *Oaths and Statutory Declarations Act*. The application in effect is not therefore supported by evidence. Notwithstanding, I will deem it as an oral application as the Applicant mainly relies on the records of this court and the lower court.
6. The Applicant was after full hearing convicted in the lower court of Robbery with Violence, Contrary to Section 296(2) of the *Penal Code*, pursuant to the provisions of Section 215 of the *Penal Code*. At



the time of the conviction, this offence attracted a mandatory death sentence which was meted out by the lower court. This court confirmed the conviction and sentence on appeal. As empowered by law, the President later commuted the death sentence to life imprisonment.

7. The Supreme Court in the famous Francis Karioko Muruatetu 2 decision has laid down the prevailing law that mandatory death sentences in capital robbery cases are not unconstitutional and must be meted out upon conviction. The apex court's earlier decision in Francis Karioko Muruatetu 1, was that a mandatory death sentence in murder cases is unconstitutional and the court clarified in its [Francis Karioko Muruatetu 2](#) decision supra that this decision only applied to murder cases.
8. To further restate the law, the Supreme Court in its latest case on this matter (Petition No. 18 of 2023; [Republic vs Joshua Gichuki Mwangi & Others](#)) reiterated that mandatory death sentences prescribed for offences other than murder, are legal and Constitutional. This would include Robbery with Violence Contrary to Section 296(2) of the [Penal Code](#) of which the Applicant was convicted. The superior directed that an aggrieved person will have to file a Constitutional Petition in this court challenging such mandatory death sentences for offence, other than murder, which litigation must also go through the Court of Appeal for a final decision. The Applicant herein is so advised.
9. Owing to the nature of the final sentence imposed against the Applicant, the court may not invoke the provisions of Section 333(2) of the [Criminal Procedure](#) which requires any period spent in remand custody to be discounted from an imposed prison term. The Applicant has not been sentenced to imprisonment for any number of years but he is serving out life imprisonment decided by a different legal entity, the Presidency.
10. For the reasons given, the application is hereby dismissed for want of jurisdiction.

J. M. NANG'EA, JUDGE.

RULING DELIVERED THIS 11TH DAY OF FEBRUARY, 2025 IN THE PRESENCE OF:

Ms Sang for the DPP

Applicant

The Court Assistant (Jeniffer)

J. M. NANG'EA, JUDGE.

