



REPUBLIC OF KENYA



KENYA LAW
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**Mwiri v Republic (Miscellaneous Application E001 of 2023)
[2025] KEHC 1387 (KLR) (Crim) (20 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1387 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
MISCELLANEOUS APPLICATION E001 OF 2023
AM MUTETI, J
FEBRUARY 20, 2025
IN THE MATTER OF: COURT OF APPEAL NO. 22 OF 2016 AT NAIROBI
AND
IN THE MATTER OF: H.C.CR. APP NO.432 OF 2007 AT NAIROBI
AND
IN THE MATTER OF: CR : CASE NO.6633 OF 2005 AT KIBERA LAW COURT
BETWEEN
KENNEDY WANGONDU MWIRI APPLICANT
AND
REPUBLIC RESPONDENT**

RULING

1. The applicant by way of a Chamber summons filed in court on 4th January 2023 has moved this court for the following orders;-
 - a. That, the application be certified urgent and be heard expeditiously
 - b. That, this Hon, Court be pleased to allow the mitigation of the applicant as ordered by the court of appeal on 8/3/2019 and award appropriate sentence.
2. The application is supported by the annexed affidavit of Kennedy Wangondu Mwiri.



Applicant's Case

3. . The applicant submitted that he has been in prison for 19 years and that while in prison he has learnt a lot and reformed ready for reintegration back into the society of civilized men who know that crime does not pay.
4. . Further, the applicant has informed the court that during his stay in prison he has acquired skills and obtained certificates in trade that will be of help to him once released from prison. He has also learned about issues to do with drug abuse and that he knows many citizens are grappling with drug abuse and he can contribute positively towards the rehabilitation efforts if this court gives him the chance.
5. . He maintains that he is fully reformed and is not likely to slip back into crime.
6. . The applicant informed the court that he went to prison at the age of 34 years and is now 53 years.
7. The applicant has therefore pleaded with this court for mercy considering the long period he has been in custody and the emerging jurisprudence on the death sentence.

Respondent's Case

8. Mr. Chebii Counsel the applicant submitted that the applicant may be admitted to resentencing.
9. According to counsel for the prosecution the court should consider that even though the applicant was charged with robbery with violence and that he was sentenced to suffer death, he should benefit from resentencing in view of the emerging jurisprudence that death sentence means 35 years imprisonment.
10. Counsel also highlighted the fact that sentencing is discretionary and the court should consider all the mitigating circumstances in the case.

Determination

11. The applicant has presented a compelling case for resentencing looking at the facts of the matter.
12. . As submitted by Counsel for the prosecution sentencing is a discretion matter and that should ideally be the business of the court that tried the applicant. It is important to point out that the ideal situation should be that applicant in a matter like this should be sent to the court that tried and convicted him for the purpose of resentencing.
13. This court is however alive to the fact that it is highly unlikely that if the applicant is sent to the lower court that he would find the magistrate that tried him to resentence him. He would certainly be sent to a different magistrate for that purpose.
14. The cry for expeditious disposal of cases has been loud enough for all to hear since the promulgation of *the Constitution* of Kenya 2010.
15. Article 159 of *the Constitution* enjoins this court to ensure that justice is not delayed and that it is done to all irrespective of their social, economic and political status.
16. The applicant is before the High Court of Kenya seeking justice and the court appreciates its special place in the justice system of the Country as a court that enjoys original unlimited jurisdiction, appellate and supervisory jurisdiction.
17. In ordinary circumstances this court would have declined jurisdiction in over this matter but each case must be judged on its own peculiar facts.



18. The applicant was tried in the lower court for robbery with violence and sentenced to suffer death which sentence has since been commuted to life imprisonment.
19. He has been in custody for 19 years now and he is said to have reformed by the prison authorities.
20. The applicant is said to be suitable for non -custodial supervision and in a report dated 25/8/2023 Andrew Kanyutu Community Service Officer recommended that the applicant be placed under supervision by a probation officer for the remainder of the term of imprisonment.
21. The Court of appeal Kisumu Criminal Appeal No. 157 of 2017 Frank Turo Vs Republic interpreted life imprisonment to mean 30 years.
22. The court of appeal has been emphatic that the severity of sentence is a matter of fact which can only be dealt with by the trial court and this court as a first appellate court. See Samuel Warui Karimi Vs Republic (2016) eKlr. The issue of sentence raised by the appellant is a matter of fact. The indeterminate nature of it as well as severity. The court agrees with the court of appeals reasoning that an indeterminate sentence is unconstitutional and in humane. See Julius Kitsao Manyeso vs Republic Malindi Criminal Appeal No. 12 of 2021 (Nyamweya, Lesiit and Odunga JJA)
23. The applicant has received favorable recommendation from the probation officer who states in his report that the community in Waithaka where the applicant lived was surprised that he had been charged and convicted of robbery. According to the sources the applicant was only known to have been abusing alcohol but no record of criminal behavior.
24. The community is said to be ready to accept him back to society and in particular the chief has said that a non-custodial order would meet the ends of justice.
25. The court has perused the record and noted that the attack though violent did not result in any notable injuries and all that the complainant who testified as Pw1 said was that he had some pains and he never went to Hospital.
26. The facts do not reveal aggravated circumstances that would merit imprisonment for 30 or so years. Taking into account all the facts of this matter, this court is inclined to set aside the indeterminate sentence of life imprisonment and substitute it therefore with a period of 20 years imprisonment.
27. The period of 20 years is imposed by this court on the basis that 30 or 35 years that the court of appeal has imposed in place of life sentence is in this courts view the accepted maximum sentence where the court intends to sentence an accused person to life imprisonment but a court dealing with a matter that attracts a life sentence, has the discretion depending on the circumstances of the case to give a lesser term.
28. In the end the application succeeds and the indeterminate life sentence is substituted with a prison term of 20 years running from the date of incarceration 2nd September 2005
29. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 20TH DAY OF FEBRUARY 2025.

A. M. MUTETI

JUDGE

In the presence of:

Court Assistant: Kiptoo



Ms Njoroge for the state

Ms Ogega for the Respondent

Applicant: present

