



REPUBLIC OF KENYA



**KENYA LAW**  
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**Murimi v Republic (Criminal Revision E099 of 2022)  
[2025] KEHC 1457 (KLR) (13 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1457 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
CRIMINAL REVISION E099 OF 2022  
RM MWONGO, J  
FEBRUARY 13, 2025**

**IN THE MATTER OF ENFORCEMENT OF THE BILL OF RIGHTS UNDER ARTICLE  
22 (1), 23 (1), 25 (D), 50 (2) (Q), 51 (2), AND 165 (3) (A) (B) (D) (I) (II) (6) AND (7) OF  
THE CONSTITUTION OF KENYA**

**IN THE MATTER OF SECTION 327 (2), 362 AND 364 OF THE CRIMINAL  
PROCEDURE CODE (CAP 75 LAWS OF KENYA)**

**AND**

**IN THE MATTER OF APPLICATION OF SECTION 216 OF THE CRIMINAL  
PROCEDURE CODE (CAP 75 LAWS OF KENYA)**

**BETWEEN**

**ELIJAH MUGO MURIMI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

**The Application**

1. The applicant's undated motion seeks the following orders:
  1. That this honourable court be pleased to issue an order under Articles 25 and 51 of the [Constitution](#) that he be heard on mitigation during sentence review;
  2. That this honourable court be pleased to hear and determine the application herein for sentence review in the interest of justice;



3. That the court be pleased to issue an order under section 216 of the [Criminal Procedure Code](#) reviewing the death penalty imposed upon him under section 296(2) of the [Penal Code](#); and
4. There be no order as to costs since the applicant is a pauper.
2. The applicant was charged with robbery with violence and convicted in Kerugoya CM Criminal Case No 365 of 2011. He was sentenced to death on 15<sup>th</sup> May, 2013. He appealed against this finding at the High Court through Kerugoya HC Criminal Appeal No 101 of 2013 and the appeal was heard and dismissed. He filed a second appeal, namely, Nyeri Court of Appeal Criminal Appeal No 114 of 2016 which he formally withdrew to make way for this resentencing application.
3. In his supporting affidavit the applicant stated that the court has the relevant jurisdiction to determine the application herein. The sentence of death imposed on the applicant was commuted to life imprisonment through a Presidential directive. The applicant asserts that the life imprisonment sentence he is now serving is also disenfranchising to him. He urged the court to pay attention to the tenets of fair hearing during the resentencing hearing and allow the application.
4. There is no response to the application on record. The application was canvassed by way of written submissions.

#### **Parties' submissions**

5. The applicant submitted that since his rights as mentioned hereinbefore have been violated, the court should consider his case and also make a declaration of rights. He relied on the cases of [Protus Buliba Shikuku v Attorney General](#) [2012] eKLR and [Jona & 87 others v Kenya Prison Service & 2 others](#) (Petition 15 of 2020) [2021] KEHC 457 (KLR) where it was established that this court has jurisdiction to resentence.
6. He argued that the sentence imposed was not judicially determined but it was pre-determined in law and it offends the provisions of the [Constitution](#) since the mitigating circumstances were not considered. He also relied on Rule 4 of the [United Nations Standard Minimum Rules for the Treatment of Prisoners](#) (the Nelson Mandela Rules) and the Prisons Service motto which is 'kurekebisha na haki'. He urged the court to allow the application and grant him a lesser sentence after considering his mitigation and in light of the [Constitution](#).
7. On its part, the respondent submitted that the court has jurisdiction to determine the application herein as provided under Article 165 of the [Constitution](#). However, the application should not succeed because the applicant has failed to demonstrate that he has indeed reformed such that he should be heard on resentencing. It argued that the hearing of trial and first appeal were heard and determined correctly and that the applicant's defense was untenable. It argued that the sentence imposed was commensurate to the offence and that it ought not be reviewed. Reference was made to the Judiciary sentencing policy guidelines.

#### **Issues for Determination**

8. The issues for determination are:
  - a) whether the court has jurisdiction to entertain the application and;
  - b) whether the sentence should be reviewed.



## Jurisdiction

9. The revisionary power of the High Court is drawn from Article 165 (6) & (7) of the Constitution which provides:
  - “(6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.
  - (7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.”
10. Section 362 of the Criminal Procedure Code provided as follows on the High Court’s supervisory jurisdiction:

“The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.”
11. The applicant was convicted of the offence of robbery with violence and sentenced to suffer death, which sentence was commuted to life imprisonment through a Presidential decree. The High Court upheld the findings of the trial court. In addition, in exercising its supervisory jurisdiction, the high court can hear and determine the application herein.
12. Paragraph 4.8.16 of the Judiciary Sentencing Policy Guidelines 2023 provides for instances where the court may hear the applicant in resentencing. The High Court,
13. Article 48 of the Constitution guarantees everyone a right to justice while Article 50 provides for the right to fair trial, which includes the right to review of a sentence. While the death sentence is a mandatory one as prescribed under section 296(2) of the Penal Code, it is still a lawful sentence in Kenya. In fact, Paragraph 2.2.6 of the Judiciary Sentencing Policy Guidelines 2023 states that following Muruatetu II, the mandatory nature of the death penalty is still applicable to other capital offences, except murder. This means that there is no basis for resentencing where this sentence was applied except in murder cases.
14. As already noted, the sentence that the applicant is currently serving is that of life imprisonment following commutation of the death sentence. This sentence has been held to be unconstitutional as discriminatory and unfair in light of our Constitution, given its indeterminate nature. This matter was discussed at length by the Court of Appeal in the cases of Julius Kitsao Manyeso v Republic (Criminal Appeal 12 of 2021) [2023] KECA 827 (KLR) (7 July 2023) and Evans Nyamari Ayako v Republic Criminal Appeal No 22 of 2018 where in both cases, the court defined a number of years to mean life imprisonment. The jurisprudence from the superior courts hold both the death sentence and life imprisonment as discriminatory with direct reference to the Constitution.
15. In Julius Kitsao Manyeso case the Court of Appeal stated at Paragraph 21 of the Judgment:

“.....we are of the view that the reasoning in Francis Karioko Muruatetu & another v Republic [2017] eKLR equally applies to the imposition of a mandatory indeterminate life sentence,



namely that such a sentence denies a convict facing life imprisonment the opportunity to be heard in mitigation when those facing lesser sentences are allowed to be heard in mitigation. This is an unjustifiable discrimination, unfair and repugnant to the principle of equality before the law under article 27 of the *Constitution*.

In addition, an indeterminate life sentence is in our view also inhumane treatment and violates the right to dignity under article 28, and we are in this respect persuaded by the reasoning of the European Court of Human Rights in *Vinter and others v The United Kingdom* (Application Nos 66069/09, 130/10 and 3896/10) [2016] III ECHR 317 (9 July 2013) that an indeterminate life sentence without any prospect of release or a possibility of review is degrading and inhuman punishment, and that it is now a principle in international law that all prisoners, including those serving life sentences, be offered the possibility of rehabilitation and the prospect of release if that rehabilitation is achieved.”

### **Conclusions and Disposition**

16. In light of the foregoing, and this Court being bound by the aforesaid authority, I find that the life sentence being served by the applicant is unconstitutional. As such, this Court has the obligation to remedy the situation. In so doing, the Court must take into account the aggravating and mitigating circumstances of the case.
17. In my view, the application succeeds and the sentence is hereby reviewed and made a determinate sentence meted.
18. Taking into account the mitigation of the applicant, this Court substitutes the life sentence of the applicant with one of twenty-five (25) years. Such period is hereby deemed to take into account any period during which the accused was held in remand custody.
19. Orders accordingly.

**DELIVERED VIRTUALLY AT KERUGOYA HIGH COURT THIS 13<sup>TH</sup> DAY OF FEBRUARY, 2025.**

**R. MWONGO**

**JUDGE**

Delivered in the presence of:

1. at Kibos Prison
2. Mamba for the Respondent
3. Francis Munyao - Court Assistant

