



**Munyekenye v Republic (Miscellaneous Criminal Application
E014 of 2023) [2025] KEHC 2794 (KLR) (14 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 2794 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
MISCELLANEOUS CRIMINAL APPLICATION E014 OF 2023**

WM MUSYOKA, J

MARCH 14, 2025

BETWEEN

AMOS OMANYALA MUNYEKENYE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant herein had been convicted of murder, contrary to section 203, as read with section 204, of the *Penal Code*, Cap 63, Laws of Kenya, and was sentenced to death, in Busia HCCRC No 12 of 2008, reported in Kenya Law as *Republic v Amos Omanyala Munyekenye & 4 others* [2015] eKLR (Tuiyott, J). He filed an appeal, at the Court of Appeal, being Kisumu CACRA No 161 of 2015, where the conviction was affirmed, and the death sentence confirmed, in a decision reported in Kenya Law as *Amos Omanyala Munyekenye & 4 others v Republic* [2019] eKLR (Makhandia, Kiage & Odek, JJA).
2. He has now come before me, by the Motion, filed on 1st August 2023, seeking review of sentence, premised on Article 50(2)(p)(q) of the *Constitution*.
3. The decision, in *Amos Omanyala Munyekenye & 4 others v Republic* [2019] eKLR (Makhandia, Kiage & Odek, JJA), came post *Francis Karioko Muruatetu & another v Republic* [2017] eKLR (Maraga CJ&P, Mwilu DCJ&VP, Ojwang, Wanjala, Njoki & Lenaola, SCJJ), and I have noted that the Court of Appeal did consider it in its judgement. The Court of Appeal noted that the Supreme Court had only taken issue with the mandatory nature of the death sentence in murder cases, leaving room for imposition of that sentence in deserving cases. The Court of Appeal was of the view, considering the way the murder, the subject of that appeal, was committed, that the case of the applicant herein deserved the death sentence.
4. In the hierarchy of courts in Kenya, the High Court, where I sit, ranks below the Court of Appeal, which means that decisions of the Court of Appeal bind me, and I cannot sit on appeal on them.



Consequently, I am obliged to bend to the decision in *Amos Omanyala Munyekenye & 4 others v Republic* [2019] eKLR (Makhandia, Kiage & Odek, JJA). It binds me. I cannot purport to chip away at it in anyway. If the applicant was dissatisfied with the confirmation of the sentence of death, by the Court of Appeal, he should have considered petitioning the Supreme Court.

5. The last point. I see that the applicant cites Article 50(2)(p)(q) of the *Constitution*, to give him a base upon which to approach the High Court. I have read and re-read Article 50(2)(p)(q) of the *Constitution*, and I have not been able to find anything in that provision which gives me discretion to sit on appeal, on a position taken by the Court of Appeal; or to even review a sentence, whether from the High Court or the subordinate courts, in the manner that he proposes.
6. In any case, all what Article 50(2)(p)(q) of the *Constitution* does is to give a guide to a court considering sentence, whether as a trial court or as an appellate court. The applicant should have cited Article 50(2)(p)(q) of the *Constitution*, in 2015, when the Judge, in Busia HCCRC No 12 of 2008, was considering the sentence to impose on him. He also had a chance to cite it before the Judges, in Kisumu CACRA No 161 of 2015, when he was urging his appeal, before them, in 2020. I am not sentencing the applicant herein, neither am I considering sentence upon an appeal. There is no foundation for me, therefore, to utilise the discretion given by Article 50(2)(p)(q) of the *Constitution* in the circumstances.
7. I find no merit at all in the Motion, filed herein on 1st August 2023, and I hereby dismiss it. Orders accordingly.

DELIVERED, DATED AND SIGNED IN OPEN COURT, AT BUSIA, ON THIS 14TH DAY OF MARCH 2025.

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Mr. Amos Omanyala Munyekenye, the petitioner, in person.

Advocates

Mr. Onanda, instructed by the Director of Public Prosecutions, for the respondent.

