



REPUBLIC OF KENYA



KENYA LAW
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**Mwaura v Republic (Criminal Miscellaneous Application
155 of 2019) [2025] KEHC 2913 (KLR) (11 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 2913 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL MISCELLANEOUS APPLICATION 155 OF 2019**

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

BETWEEN

JAMES KARANJA MWAURA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. By Notice of Motion dated 24th September 2019 the Applicant prays for orders as hereunder:-
 1. That this Hon. Court be pleased be determine my application as prayed herein (sic).
 2. That it is within the rules of law for the same to be considered (sic).
 3. That this application is grounded upon annexed affidavit of James Karanja Mwaura and other further grounds to be adduced at the hearing of this application (sic).
2. The application is supported by affidavit evidence to the effect that the Applicant has been in custody since 2008 after his conviction and sentence in the lower court. He seeks review of his sentence pursuant to Section 333(2) of the *Criminal Procedure Code*. He further avers that he has reformed while in prison and deserved a relook at the sentence.
3. The Applicant places reliance on superior court's decisions in *Francis Karioko Muruatetu & others v Republic* being the Supreme Court Petition No 15 of 2015 and "*Guyo Jarso Guyo* Petition No 6 of 2018 at Marsabit."
4. The Applicant and Prosecution Counsel undertook to file their submissions but none have been put in.
5. I have perused the application and record. It is not clear from the application what specific reliefs the Applicant craves. He, however, appears to seek re-sentencing for the reasons given. The lower



court's record was not availed but based on this court's judgment dated 30th July 2012 following the Applicant's appeal, the Applicant had been charged and convicted in the subordinate court at Nakuru for Defilement Contrary to Section 8(1) as with Section 8(2) of the *Sexual Offences Act* No 3 of 2006. He was sentenced to life imprisonment and the conviction and sentence were upheld in this court's judgment alluded to hereinabove.

6. In the now famous case of Francis Karioko Muruatetu the Applicant refers to, the Supreme Court has held that the then mandatory death for murder is unconstitutional. As per the apex court's latest decision on matters of re-sentencing delivered in Constitutional Petition No E018 of 2023 (*Republic v Joshua Gichuki Mwangi & others*) in regard to minimum sentences prescribed for sexual offences such as meted out against the Applicant, the court confirmed that the same are constitutional. Any challenge as to the constitutionality of the minimum sentences or any other death sentences should be mounted in the High Court and, where necessary, escalated to the Court of Appeal for a final decision. The Supreme Court also underscored and clarified that the reasoning in Francis Karioko Muruatetu case supra does not apply to sexual offences or any other offences other than murder.
7. The application therefore lacks in merit and is dismissed.

J. M. NANG'EA - JUDGE

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

Ms Sang for the DPP

Applicant, present

Court Assistant (Jeniffer)

J. M. NANG'EA - JUDGE

