



**Kinyua v Republic (Miscellaneous Criminal Application
E030 of 2024) [2025] KEHC 4241 (KLR) (1 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4241 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
MISCELLANEOUS CRIMINAL APPLICATION E030 OF 2024**

LN MUTENDE, J

APRIL 1, 2025

BETWEEN

JOSEPHAT MUGAMBI KINYUA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Josephat Mugambi Kinyua, the Applicant, together with two (2) Others were arrested and indicted for Robbery with Violence contrary to Section 296(2) of the *Penal Code*; and, Attempted Robbery with violence contrary to Section 297(1) of the *Penal Code*. He was taken through full trial, convicted on both Counts and sentenced to suffer death on the first Count, and, to pay a fine of Ksh.40,000/- and, in default to serve Six (6) months imprisonment on the second count, a sentence that was to be held in abeyance.
2. Aggrieved, he proffered an appeal to the High Court. HCCRA No. 29 of 2018 which was later deemed to have been abandoned and the file closed.
3. Subsequently, the Applicant filed a Notice of Motion seeking an order of the court revising the sentence of death to a definite one. The basis of the application is that the Applicant has reformed, he is a family man such that the sentence which is harsh has affected his family.
4. I have considered averments put forth by the Applicant. The Court of Appeal in *Bernard Kimani Gacheru vs. Republic* [2002] eKLR stated as follows:

...“It is now settled law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account some wrong material,



or acted on a wrong principle. Even if, the Appellate Court feels that the sentence is heavy and that the Appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, anyone of the matters already states is shown to exist.”....

5. In *Shadrack Kipchoge Kogo v Republic* Eldoret Criminal Appeal No. 253 of 2003 the court delivered itself that;

“Sentence is essentially an exercise of the trial court and for this court to interfere, it must be shown that in passing the sentence, the court took into account an irrelevant factor or that a wrong principle was applied or short of those the sentence was so harsh and excessive that an error in principle must be inferred.”

6. Section 296(2) of the [Penal Code](#) provides that:

Any person who commits the felony of robbery is liable to imprisonment for fourteen years.

(2) If the offender is armed with any dangerous or offensive weapon or instrument, or is in company with one or more other person or persons, or if, at or immediately before or immediately after the time of the robbery, he wounds, beats, strikes or uses any other personal violence to any person, he shall be sentenced to death.

297. Attempted robbery

(1) Any person who assaults any person with intent to steal anything, and, at or immediately before or immediately after the time of the assault, uses or threatens to use actual violence to any person or property in order to obtain the thing intended to be stolen, or to prevent or overcome resistance to its being stolen, is guilty of a felony and is liable to imprisonment for seven years....

(2) If the offender is armed with any dangerous or offensive weapon or instrument, or is in company with one or more other person or persons, or if, at or immediately before or immediately after the time of the assault, he wounds, beats, strikes or uses any other personal violence to any person, he shall be sentenced to death...

7. It is apparent that the trial magistrate did adhere to laid down provisions of the law. Additionally, in [Republic v Mwangi & Others](#) Petition No. E018 of 2023 (2024) KESC 34(KLR) the Supreme Court stated that the decision of Muruatetu which declared the death penalty provided for murder unconstitutional, didn't invalidate mandatory sentence, minimum sentence in the [Penal Code](#), the [Sexual Offences Act](#) or in any other statutes.

8. If indeed, the Applicant is facing challenges and is of good conduct as alleged, he may petition the president through the Advisory Committee on the Power of Mercy for free or conditional liberty.

9. From the foregoing the application by the Applicant is without merit. Accordingly, it is dismissed.

10. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 1ST DAY OF APRIL, 2025.

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L.N. MUTENDE



JUDGE

