



**Byengoma v Republic (Criminal Revision E069 of 2024)
[2025] KEHC 5972 (KLR) (12 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5972 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL REVISION E069 OF 2024
DR KAVEDZA, J
MAY 12, 2025**

BETWEEN

JOHN BYENGOMA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was convicted in Kibera Chief Magistrate’s Court Criminal Case No. 3466 of 1998 for robbery with violence under section 296(2) of the *Penal Code* and sentenced to death. He was also convicted of being in possession of a firearm and ammunition without a certificate, contrary to section 4(2)(a) of the *Firearms Act*, and sentenced to 10 years’ imprisonment on each count to run concurrently. His appeal to this Court was dismissed. He is currently serving a life sentence.
2. He has now filed the present application seeking resentencing. The grounds raised are that the death sentence was in contravention of his constitutional rights. He has been incarcerated for the last 27 years which is sufficient rehabilitation. He is remorseful and undertakes to become a law-abiding citizen if released.
3. The Judiciary Sentencing Policy Guidelines, 2023 provides as follows on who can apply for resentencing.
4. 8.16 A resentencing application can be made:
 - i. After the completion of the trial process and where a sentence has been issued.
 - ii. Where an appeal is pending before the Court of Appeal, the High Court will entertain an application for resentencing upon being satisfied that the appeal has been withdrawn.



12. In this case, it appears that in determining the sentence, the learned trial magistrate's decision was primarily influenced by the mandatory nature of the applicable law. This jurisprudence has since shifted after the promulgation of *the Constitution* of Kenya, 2010.
13. Furthermore, it is significant to emphasize that the decisions in the Supreme Court and Court of Appeal cases Muruatetu, Manyeso and Nyamari (supra), recognize that indeterminate sentences deprive a convict of the opportunity to be heard in mitigation, while convicts facing lesser sentences are granted such an opportunity. The deprivation constitutes unjustifiable discrimination, is unfair, and contravenes the principle of equality before the law as enshrined in Article 27 of *the Constitution*. Additionally, an indeterminate life sentence, amounts to inhumane treatment and violates the right to dignity under Article 28 of *the Constitution*. It is also a principle of international law that all prisoners serving life sentences should be afforded the possibility of rehabilitation and the prospect of release if such rehabilitation is achieved. (See the decisions of the European Court of Human Rights: Vinter and others v. United Kingdom (Application nos. 66069/09, 130/10 and 3896/10) [2016] III ECHR 317 (9 July 2013) and Murray v. the Netherlands [GC], no. 10511/10, (26 April 2016)
14. In the instant case, the appellant was charged with the offence of robbery with violence contrary to section 296(2) of the *Penal Code* and was sentenced to death as per the law, which sentence was commuted to life imprisonment. However, I am guided by the recent court of appeal decision in the case of Nyamari (supra) where life imprisonment was construed to mean a maximum of 30 years imprisonment, I hereby set aside the life sentence for the offence of robbery with violence and substitute it with a sentence of thirty (30) years' imprisonment to run from the date of the applicant's arrest, 27th April 1998 pursuant to section 333(2) of the *Criminal Procedure Code*.
15. From the record, I note that the applicant has been in custody for twenty-seven (27) years imprisonment. In the premises, the sentence served is sufficient. The applicant is released forthwith and being a Ugandan National, he shall be repatriated to his country of origin by the Immigration Department.

Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 12TH DAY OF MAY 2025

D. KAVEDZA

JUDGE

