



**Chokor v Republic (Criminal Revision E039 of 2024)
[2025] KEHC 5918 (KLR) (8 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5918 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL REVISION E039 OF 2024**

RB NGETICH, J

MAY 8, 2025

BETWEEN

MUSA YEGON CHOKOR APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant Musa Yegon Chokor was charged and convicted for the offence of Robbery with violence contrary to section 296(2) of the Penal Code and subsequently sentenced to Life imprisonment in Criminal case No. 267 of 2013 at Kabarnet Magistrate's court.
2. The Applicant has approached this court vide an undated Notice of Motion application seeking review of his life sentence to a determinate term sentence and period spent in remand during trial be computed as per the provisions of Section 333(2) of the Criminal Procedure Code. The Applicant avers that upon being sentenced to life imprisonment, he appealed to the High court at Kabarnet Vide HCCRA 199 of 2013 where his appeal was dismissed in its entirety and he now seeks review of sentence under the Articles 50(2)(p)(q) of the constitution.
3. The Applicant states that he is remorseful for the offence he committed and he has taken advantage of the rehabilitation programs provided in the prison and is therefore ready for re-integration to the society and that the Respondent will not be prejudiced if this application is allowed.

Response By Prosecution

4. The prosecution urged this court to call for a social inquiry report before they could respond to the Application and the social inquiry report was filed as directed by this court on 19th February, 2025.



Social Inquiry Report

5. From the report, the Applicant had no formal education and prior to his incarceration he worked as a herder. However, upon incarceration, he started formal education from grade 1 up to grade 6. He has also undertaken courses in carpentry and tailoring as well as religion.
6. The Applicant's wife stated that she has had to shoulder the burden of taking care of their 3 children and prayed that the Applicant be sentenced to serve a favorable determinate sentence so that once he leaves prison, he can take up his parental duties as a father. She added that as a family, they are ready to welcome the applicant back home if released. His brother confirmed that he is willing to participate in the applicant's reintegration and resettlement if released from prison.
7. The Applicant states that he admits the offence and says he does not know the victim but he once got an opportunity to talk to the victim's wife via phone call and he asked for forgiveness. He prays that he be sentenced to serve a determinate sentence. While in prison, the Applicant has undertaken a course in carpentry and obtained grade III and grade II. He has also done religious courses, Safari ya mfungwa and Maisha Mapya and he has earned certificates in both. He further undertook a course in tailoring grade III and is currently studying grade II. He promises to utilize the skills he has learnt in prison so as to earn a decent living when out of prison.
8. The victim and his wife both opposed revision of sentence to a determinate sentence adding that the Applicant was a serious security threat in the region before he was incarcerated. The victim added that he believes if the Applicant is ever released from prison, his life may be in danger.
9. The local administration, the current chief and assistant chief were not yet employed at the time the offence occurred but they were still able to describe the Applicant as he was well known because his father was once a chief.
10. From the report, the Applicant was known to be violent; that he was in possession of a firearm and was known to shoot without thinking twice and the community at large feared him and some still fear him. Inquiry shows that the Applicant shot dead his own brother and a cousin but the matters were resolved through traditional means and was not charged in court. Further that he was known to engage in theft and cattle rustling using the fire arm he had in his possession and was considered to be extremely dangerous as he would shoot without provocation whenever he was involved in stealing stock. The Applicant was known to terrorize residents of neighboring locations and return to paka location where he lived to hide.
11. The local administration opposes the Applicant being released from prison as he will go back to his old ways and will pose a serious security threat in the locality. The applicant stated that he has been in custody for almost 12 years now. That he is now 38 years old and was 26 years old at the time of arrest.

Response By State

12. On 4th March, 2025, the prosecution counsel Ms Bartilol submitted that the Applicant had filed appeal before this court which was dismissed. She submitted that the Applicant is serving life sentence and she would have asked the court to down its tools but life sentence was declared unconstitutional and urged this court to exercise its discretion looking at the social inquiry report and give a definite sentence.

Analysis And Determination

13. The application here invokes the revisional jurisdiction of this court which gives the court powers, in appropriate cases, to review and vary any orders, decision or sentence passed by the trial court if the



court was satisfied that the impugned order, decision or sentence was illegal or was a product of an error or impropriety on the part of the trial court. If the court was so satisfied, the law mandated it to make appropriate orders to correct the impugned order, decision or sentence and align it with the law. The above is the import of Section 362 as read with Section 364 of the *Criminal Procedure Code*.

14. From the social inquiry report, the applicant was 26 years old at time of sentence. He is now 38 years having served for 12 years in prison. While in prison he has learnt skills that will help him earn a living if released. He prays for determinate sentence.
15. The prosecution counsel did not oppose revision of life sentence in this case on the basis of court appeal declaring life sentence unconstitutional. The Court of Appeal in the case of *Julius Kitsao Manyeso v Republic* (Criminal Appeal 12 of 2021) [2023] KECA 827 (KLR) (7 July 2023) declared life sentence unconstitutional while stating as follows: -

“...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*”.

16. Further, Criminal Appeal No. 22 of 2018 *Evans Nyamari Ayako v Republic* the court of appeal in Kisumu held that life imprisonment is cruel and degrading treatment since it is indefinite and in the present case decided to allow the appeal on the sentence by reducing Respondent’s sentence of life imprisonment to thirty (30) years. The Respondent was ordered to serve thirty (30) years from the date of his arraignment, being 18th July 2011.
17. The DPP being aggrieved the court appeal’s decision filed Petition No.E002 Of2024 *Republic v Evans Nyamari Ayako* challenging the court of appeal decision to promulgate or prescribe a period of 30 years to life imprisonment arguing that it was the role of the legislature to do issue and further that the court of appeal did not have the jurisdiction to determine constitutionality of life sentence.
18. The supreme court reiterated its position on applicability of rationale in *Muruatu I* as clarified in *Muruatetu II* as follows:-

“In the Muruatetu II Case we reiterated that the rationale in the Muruatetu I Case was only applicable to the mandatory death penalty for the offence of murder under Section 203 as read with 204 of the *Penal Code*. Further, we disabused the notion that the rationale could be applied as is to other offences with a mandatory or minimum sentence.”

19. The supreme court further faulted the court of appeal for prescribing or promulgating life sentence to 30 years and stated as follows:-

“...Moreover, by delimiting life imprisonment to a term sentence of thirty (30) years, the Court of Appeal had taken over the mandate of the Legislature in line with Article 94 of the *constitution*. In addition, the court had also violated Article 51 of the *constitution* which provides that only Parliament can define a category of crime and prescribe punishment to it. Article 51(3) of the *constitution* in particular, vests the Legislature with the duty of determining the treatment of prisoners including terms for parole, conditions for release, and supervision upon release. The Appellant cited the case of the Supreme Court of the United States of America in *Gore v United States*, 357 U.S. 386, 78 S. Ct. 1280, 2 L. Ed. 2d



1405 [1958] where it was held that the sphere of penology is purely a legislative function and not one for the courts.”

20. The supreme court further stated as follows: -

“...In view of the foregoing, we find that the Court of Appeal ought not to have proceeded to set a term sentence of thirty (30) years as a substitution for life imprisonment, as the effect would be to create a provision with the force of law while no such jurisdiction is granted to it. The term of thirty years was arrived at arbitrarily without involvement of Parliament and the people. In consequence, we find that the Court of Appeal ventured outside its mandate and powers.”

21. In view of the above, from the above decision of the supreme court, the court of appeal declared life sentence unconstitutional without proper legal and judicial process being followed. The legislature has not amended the law despite recommendation from the supreme court. Secondly the High court is mandated to interpret the law as provided under Article 165 (3)(d) and the legality of life sentence has not been determined by the High. The supreme faulted the court of appeal for declaring life sentence unconstitutional and for prescribing 30 years for life sentence whereas the issue was not properly before the court of appeal. Further that the court of appeal failed to adhere by the doctrine of stare decisis even after the supreme court clarified in Muruatetu II that the decision applied to murder cases only.

22. In view of the above, life sentence imposed against the applicant herein is legal. The applicant was charged with the offence of robbery with violence. The prescribed sentence is death which has been commuted to life sentence. The applicant stated that he has been in prison for 12 years. He was arrested at the age of 26 years and is now 38 years.

23. I have perused and considered social inquiry report filed. From the sentiments given, the applicant has had criminal history of engaging in cattle rustling while armed with fire arm and was considered to be extremely dangerous as he would shoot without provocation in the process of stealing stock and terrorized residents of neighboring locations and would return to his location to hide. From social inquiry report, he shot dead his brother and cousin.

24. In view of the negative report concerning the applicant and the fact that the sentence imposed is legal, I decline to revise life sentence imposed by the trial court.

25. Final Orders: -

Application for review of life sentence is hereby dismissed.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 8TH DAY OF MAY 2025

.....

RACHEL NGETICH

JUDGE

In the presence of:

CA Elvis/Momanyi.

Ms. Kosgei for state.

Applicant present.

