



**Kitemange v Republic (Miscellaneous Criminal Application
E003 of 2025) [2025] KEHC 6353 (KLR) (22 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6353 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
MISCELLANEOUS CRIMINAL APPLICATION E003 OF 2025**

JN ONYIEGO, J

MAY 22, 2025

BETWEEN

PETER MUTHENGI KITEMANGE APPLICANT

AND

REPUBLIC RESPONDENT

*(Being a revision application against the conviction and sentence of Hon. B.
M. Mararo) delivered in Kyuso PM's court in criminal case number 4 of 2012)*

RULING

1. The applicant herein was arraigned before Kyuso PM'S court charged with robbery with violence contrary to Section 296 (2) of the [Penal Code](#).

The particulars were that on 23rd August, 2011 at Wangemi village Mutanda location Mumoni District in Kitui County, jointly with another not before the court, being armed with offensive weapon namely an iron bar robbed Josephine Kasyoka Kilonzo of cash Kshs.5,000, one mobile phone make Nokia 1280, National Identity Card and one bag valued at Kshs.7,000 and immediately after the time of such robbery uses actual violence on the said Josephine Kasyoka Kilonzo.

2. He pleaded not guilty and the matter proceeded for hearing. Upon conclusion of the trial, the appellant was convicted. Consequently, he was sentenced to life imprisonment on 18th October, 2012. Aggrieved by both the conviction and sentence, he appealed to this court vide criminal appeal number 102 of 2012. Upon considering the appeal, on 9-12-2013, a two judge bench dismissed the appeal on conviction and substituted the sentence of life imprisonment with death penalty.
3. Undeterred, the applicant lodged a second appeal before the Court of Appeal. On the other hand, he moved this court vide a notice of motion which is not dated seeking re-sentencing on grounds that death penalty is unconstitutional. The applicant referred the court to Petition number 5 of 2022 as consolidated with petition number 6 of 2022 Mombasa high court to support his position.



4. However, he conceded that the appeal before the court of appeal is still pending hearing and determination.
5. Mr. Owuor on the other hand contended that this court is functus officio having determined the first appeal and that the applicant should await the outcome of the Court of Appeal.
6. I have considered the application herein and the objection thereof. There is no dispute that this court has already pronounced itself on the issue of sentence. As a consequence, there is an appeal pending before the court of appeal. This court is therefore encumbered by law not to make any further orders on the same issue while the matter is still pending before the court of appeal. The only option available to the applicant is to pursue his appeal and not to have parallel proceedings in both courts.
7. In view of the above holding, the application is dismissed.

DATED, SIGNED AND DELIVERED THIS VIRTUALLY THIS 22ND DAY OF MAY 2025

J. N. ONYIEGO

JUDGE

