



**Wangare v Republic (Criminal Revision E119 of 2024)  
[2025] KEHC 5700 (KLR) (8 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5700 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
CRIMINAL REVISION E119 OF 2024  
FN MUCHEMI, J  
MAY 8, 2025**

**BETWEEN**

**FRANCIS KINYUA WANGARE ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. This application for determination is undated whereas the applicant seeks to have his sentence reviewed.
2. The applicant was convicted by Thika Chief Magistrate, in *Criminal Case No. 1458 of 2008* with two counts of the offence of robbery with violence contrary to Section 296(2) of the [Penal Code](#) and was sentenced to death. The applicant appealed to the High Court in *Milimani Criminal Appeal No. 423 of 2009* and the appeal was dismissed.
3. The applicant states that he was sentenced to a mandatory sentence as prescribed by Section 296(2) of the [Penal Code](#) without considering his mitigation or the circumstances of the case. The applicant refers to the decision in the Court of Appeal in *Manyeso v Republic* (Criminal Appeal 12 of 2021) [2024] KECA 827 (KLR) (7 July 2024) (Judgment) which declared life imprisonment as being unconstitutional and urges the court to review his sentence in light of that decision.
4. The respondent states that the applicant was charged with the offence of robbery with violence and was found guilty and sentenced to death. Being dissatisfied, the applicant filed an appeal at Milimani High Court *vide* Criminal Appeal No. 423 of 2009 where the court dismissed his appeal and the conviction and sentence of the trial court upheld.
5. The respondent argues that the applicant has not stated that the sentence is manifestly harsh and excessive, that the sentence was illegal or improper or that the trial court acted on a wrong principle or omitted relevant factors or took into account irrelevant factors in sentencing. The respondent



- further states that the applicant has given generalized reasons which do not suffice interference with the discretion of the trial court in sentencing warranting upsetting the sentence imposed by the trial court.
6. The respondent further states that both mitigating and aggravating circumstances were considered but the aggravating circumstances outweighed the mitigating circumstances hence the sentence by the trial court as well as confirmed by the High court. The respondent states that the sentence imposed by the trial court was proper and legal as it considered the aggravating and mitigating circumstances.
  7. The respondent argues that the High Court in Milimani has similar jurisdiction with the instant court. Since the High court Milimani Nairobi has pronounced itself on the issue of sentencing, this court is *functus officio*. As such, the applicant ought to have filed an appeal in the Court of Appeal.
  8. The respondent states that the applicant is forum shopping, abusing the court process, wasting precious judicial time and thus the application ought to be dismissed.

### **The Applicant's Submissions.**

9. The applicant submits that he has been in prison custody for sixteen years and urges the court to review his sentence and grant him an appropriate lenient definite sentence taking into account that life expectancy is seventy years. The applicant relies on the cases of *Joseph Waibaro Waiyoro & 2 Others v Republic* (2018) eKLR and *Sebastian Okwero Mrefu v Republic* (2014) eKLR and submits that the life sentence is cruel, unhuman and degrading punishment which violates his constitutional rights.
10. The applicant further submits that he is very remorseful and that since incarceration, he has taken rehabilitation programmes and has positively and greatly benefited from the said trainings.
11. The applicant urges the court to find that the period of 16 years that he has been in lawful custody as being sufficient.
12. The applicant relies on the case of *Ahmed Abolfathi Mohammed* Criminal Appeal No. 135 of 2016 and *Sila Jona & 87 Others v Kenya Prisons Service & Another* Petition No. 15 of 2020 (2025) KEHC 457 eKLR and submits that the trial court failed to consider the time he spent in custody.

### **The Respondent's Submissions.**

13. The respondent reiterates the contents of her affidavit and prays that the application be dismissed as it lacks merit.

### **The Law.**

14. This court is empowered by Article 165(6) of the *Constitution* of Kenya to review a decision by a subordinate court. Article 165(6) provides:-

The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.
15. The applicant has come to this Honourable court by way of review provided for under Article 50 of the *Constitution*. It provides:-
  - (2) Every accused person has the right to a fair trial, which includes the right:-
    - (q) If convicted, to appeal to, or apply for review by a higher court as prescribed by law.



16. In the case of *Samuel Kamau Macharia v KCB & 2 Others*, Civil Application No. 2 of 2011, it was stated:-

“A court’s jurisdiction flows from either the Constitution or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.”

17. The applicant herein was convicted for the offence of robbery with violence by the trial court in Thika CM *Criminal Case No. 1458 of 2008* and sentenced to death. He appealed to the High Court in Milimani vide *Criminal Appeal No. 423 of 2009* and the court dismissed his appeal and upheld the conviction and sentence in respect of the offence of robbery with violence.

18. Article 50(2)(q) of the [Constitution](#) is of relevance above cited provides that a convicted person may appeal to or apply for review of any order in a higher court. The applicant has already appealed against the judgment of the trial court in the High Court and the sentence was upheld. As such, he has already exhausted the option of an appeal. He cannot therefore apply for review. Only one of the two options is available to him.

19. The applicant, on the other hand is asking this court to review the judgment of the High Court which is a court of concurrent jurisdiction. This court cannot do such a review for it is beyond its mandate.

20. I find that this application is misconceived, incompetent and a waste of precious judicial time. It is accordingly struck out.

21. It is hereby so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 8<sup>TH</sup> DAY OF MAY 2025.**

**F. MUCHEMI**

**JUDGE**

