



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
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**Ochieng & 2 others v Republic (Criminal Miscellaneous Application  
E070 of 2025) [2025] KEHC 8839 (KLR) (20 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8839 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CRIMINAL MISCELLANEOUS APPLICATION E070 OF 2025**

**A MABEYA, J**

**JUNE 20, 2025**

**BETWEEN**

**STEPHEN OMONDI OCHIENG ..... 1<sup>ST</sup> APPLICANT**

**ERICK ONYANGO OCHIENG ..... 2<sup>ND</sup> APPLICANT**

**ERICK ONYANGO OTIENO ..... 3<sup>RD</sup> APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Stephen Omondi Ochieng, Erick Onyango Ochieng And Erick Onyango Otieno ‘the applicants’, were charged before the Winam Principal Magistrates Court with the offence of robbery with violence contrary to section 296(2) of the *Penal Code*.
2. Following their trial, they were found guilty and convicted and sentenced to suffer death. They appealed to the High Court (Majanja J) which was dismissed. Their appeal to the Court of Appeal vide Kisumu CRA No. 133 of 2019 was finally dismissed on 10/1/2025.
3. In its judgment, the Court of Appeal (Okwangu, Omondi and Ngugi JJA) observed: -

“ 38. The appellant has challenged the death sentence imposed by the trial court and upheld by the first appellate court on the basis that the same was excessive, harsh and unconstitutional. In challenging the sentence of death prescribed under section 296(2) of the *Penal Code*, the appellant has relied on the decision of the Supreme Court in Francis Kariako Muruatetu & Others vs Republic [2017] eKLR. (Muruatetu 1).



39. It must however be noted that, in its directions in *Muruatetu & Another vs Republic; Katiba Institute & 4 Others (Amicus Curiae)* (Petition 15 & 16 of 2015) [2021] KESC 31 [KLR] (6 July 2021) (Directions) (*Muruatetu 2*), the Supreme Court directed that its decision in *Muruatetu 1* only applied to the mandatory death sentence for the offence of murder under sections 203 as read with section 204 of the *Penal Code*.
40. Looking at the circumstance of this case and the manner in which the appellants executed the robbery it is our considered view that the sentence was commensurate to the charges against the appellants; thus the sentence was legal and proper and is hereby upheld.
41. accordingly, the appeal lacks merit and is dismissed in its entirety.”
4. On 18/2/2025, the applicants took out a Motion on Notice in which they sought that their sentence of death be substituted with a lenient one. They raised the issues of Articles 27, 28 and 50(2) of *the Constitution*. That the death sentence should be substituted with life as was the case in *Opondi Peter Omukanya vs Republic* CRA No. 260 of 2019.
5. I have considered the record and the applicants’ averments. All I can state is that, the Court of Appeal having rendered itself as it did in its decision of 10/1/2025 in *Kisumu* CRA No. 133 of 2019, this Court is benefit of any jurisdiction to second guess that Court’s finding.
6. In this regard, the option open to the applicants is to go to that Court and seek its indulgence, if there be a route there, and not this Court.
7. Accordingly, this Court has no jurisdiction to entertain the Motion dated 18/2/2025 and hereby strikes it out.

It is so ordered.

**DATED AND DELIVERED AT KISUMU THIS 20<sup>TH</sup> DAY OF JUNE, 2025.**

**A. MABEYA, FCI Arb**

**JUDGE**

