



REPUBLIC OF KENYA



**Otieno v Republic (Criminal Petition E006 of 2023)
[2025] KEHC 8615 (KLR) (20 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8615 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CRIMINAL PETITION E006 OF 2023
WM MUSYOKA, J
JUNE 20, 2025**

BETWEEN

RAPHAEL OCHIENG OTIENO PETITIONER

AND

REPUBLIC RESPONDENT

RULING

2. The petitioner had been convicted in Busia CMCCRC No. 661 of 2002, of robbery with violence, and was sentenced to death. That death sentence was subsequently commuted, by the President of the Republic of Kenya, to life imprisonment.
3. The petitioner decries the mandatory death sentence, and the subsequent life imprisonment to which it was commuted. His Motion, of 8th August 2023, seeks review of the sentence imposed in Busia CMCCRC No. 661 of 2002.
4. In his own words, the petitioner has averred that the death sentence, imposed by the trial court, was commuted by the President, to life imprisonment. The death sentence is, therefore, not available for review, in the manner the petitioner envisages in the Motion and petition herein.
5. Secondly, commutation of the sentence, from death to life imprisonment, was by an act of the Executive, not the Judiciary. The court cannot now purport to review, in these proceedings, an Executive act, which was not a judicial act in Busia CMCCRC No. 661 of 2002. The petitioner should, perhaps, take advance of the measures under the Executive, such as remission and the prerogative of mercy
6. Thirdly, by dint of Francis Karioko Muruatetu & another vs. Republic; Katiba Institute & 5 others (Amicus Curiae) [2021] eKLR (Koome CJ&P, Mwilu DCJ&VP, Ibrahim, Wanjala, Njoki, Lenaola & Ouko, SCJJ), and the subsequent decisions in Republic vs. Manyeso [2025] KESC 16 (KLR) (Mwilu, DCJ&VP, Ibrahim, Wanjala, Ndung'u & Lenaola, SCJJ) and Republic vs. Ayako [2025]



KESC 20 (KLR)(Mwilu, DCJ&VP, Ibrahim, Wanjala, Ndung'u & Lenaola, SCJJ), the mandatory death sentences in the statutes, except for murder, remain valid and constitutional. Consequently, the review sought cannot be available.

7. Fourthly, regarding life imprisonment, Republic vs. Mwangi; Initiative for Strategic Litigation in Africa (ISLA) & 3 others (Amicus Curiae) [2024] KESC 34 (KLR) (Koome, CJ&P, Ibrahim, Wanjala, Ndung'u & Lenaola, SCJJ), Republic vs. Manyeso [2025] KESC 16 (KLR) (Mwilu, DCJ&VP, Ibrahim, Wanjala, Ndung'u & Lenaola, SCJJ) and Republic vs. Ayako [2025] KESC 20 (KLR)(Mwilu, DCJ&VP, Ibrahim, Wanjala, Ndung'u & Lenaola, SCJJ) have declared it to be a lawful sentence.
8. Consequently, I find no basis, at all, upon which I can review the sentence that was imposed in Busia CMCCRC No. 661 of 2002. The petition herein is, accordingly, not well founded, and I hereby dismiss it.
9. For the purpose of information, with respect to files from the trial court not being availed to the High Court, let a copy of this ruling be made available to the Chief Magistrate.

DELIVERED, DATED AND SIGNED IN OPEN COURT, AT BUSIA, ON THIS 20TH DAY OF JUNE 2025.

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Mr. Raphael Ochieng Otieno, the petitioner, in person.

Advocates

Mr. Onanda, instructed by the Director of Public Prosecutions, for the respondent.

