



**Uvyi v Republic (Miscellaneous Criminal Application
E021 of 2023) [2025] KEHC 8384 (KLR) (12 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8384 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
MISCELLANEOUS CRIMINAL APPLICATION E021 OF 2023**

RC RUTTO, J

JUNE 12, 2025

BETWEEN

MOSES MASESI MBINDA UVYI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant was charged with the offence of murder contrary to section 203 as read together with section 204 of the *Penal Code*. He was convicted and sentenced to suffer death.
2. Upon being convicted, he appealed to the Court of Appeal vide Nairobi Court of Appeal Criminal Appeal No 122 of 2003. On 18th November 2005, the appeal was dismissed. In dismissing the appeal, the Court of Appeal held that the charge of murder against the appellant was proved beyond any reasonable doubt.
3. Fast forward, the Applicant by way of a Notice of Motion application now seeks that this court resentence him pursuant to the Supreme Court Decision in the case of Francis Muruatetu & Another v Republic, Katiba Institute & 5 others (Amicus Curiae) (2021) eKLR. The application is premised on the grounds that the Respondent is bound by the provisions of *the Constitution* and written law and that it is in the interest of justice that the Applicant be re-sentenced.
4. In support of this application, he filed submissions dated 26th February 2024 wherein he urged this Court to consider that he is remorseful, has sought forgiveness from the victim's family; the elders from both families have agreed and payments have been made as shown by the probation report dated 3rd November 2011; that he is a first offender; and that he has engaged in rehabilitative programs which have reformed and improved his character. He prayed for a lenient sentence since he had been in custody since 4th February 1996. I have taken note of the several authorities he cited to urge the Court to review his sentence.



5. This Court is being called upon to review and resentence an Applicant. The chronology of events as noted is that; the Applicant was convicted on 9th November 1999. He lodged his appeal before the Court of Appeal and on 18th November 2005 the Court of Appeal dismissed it. The Applicant now seeks to rely upon the case Francis Karioko Muruatetu & Another vs Republic (Supra) to have this Court resentence him.
6. This Court notes that on 6th July 2021, the Supreme Court gave guidelines on the application of the Francis Karioko Muruatetu & Another vs Republic (Supra) decision. The apex Court issued the following directions: -

“ 16. To the extent directly relevant to the matters under review in these directions, we note the Attorney General in his Report, together with the Task Force recommended, that:

- a) Life imprisonment be substituted where the *Penal Code* previously provided for the death penalty, with the option of life imprisonment without parole for the most serious of crimes; and that if not abolished, the death penalty should only be reserved for the rarest of rare cases involving intentional and aggravated acts of killing.
- b) All offenders, subject to the mandatory death penalty, including those convicted and sentenced prior to 2010, who are serving commuted sentences, will be eligible for re-sentencing, including all offenders sentenced to death as at the time of the decision which was made on December 14, 2017.
- c) Where an appellant has lodged an appeal against a conviction and/or sentence, the appellate court must, at any stage before judgment, remit the case to the trial court for re-sentencing.....

18. Having considered all the foregoing, to obviate further delay and avoid confusion, we now issue these guidelines to assist the Courts below us as follows:

- i. The decision of Muruatetu and these guidelines apply only in respect to sentences of murder under sections 203 and 204 of the *Penal Code*;
- ii. The Judiciary Sentencing Policy Guidelines to be revised in tandem with the new jurisprudence enunciated in Muruatetu;
- iii. All offenders who have been subject to the mandatory death penalty and desire to be heard on sentence will be entitled to re-sentencing hearing.
- iv. Where an appeal is pending before the Court of Appeal, the High Court will entertain an application for re-sentencing upon being satisfied that the appeal has been withdrawn.
- v. In re-sentencing hearing, the court must record the prosecution's and the appellant's submissions under section 329 of the



Criminal Procedure Code, as well as those of the victims before deciding on the suitable sentence.

- vi. An application for re-sentencing arising from a trial before the High Court can only be entertained by the High Court, which has jurisdiction to do so and not the subordinate court.
- vii. In re-hearing sentence for the charge of murder, both aggravating and mitigating factors such as the following, will guide the court;
 - (a) Age of the offender;
 - (b) Being a first offender;
 - (c) Whether the offender pleaded guilty;
 - (d) Character and record of the offender;
 - (e) Commission of the offence in response to gender-based violence;
 - (f) The manner in which the offence was committed on the victim;
 - (g) The physical and psychological effect of the offence on the victim's family;
 - (h) Remorsefulness of the offender;
 - (i) The possibility of reform and social re-adaptation of the offender;
 - (j) Any other factor that the court considers relevant.
- viii. Where the appellant has lodged an appeal against sentence alone, the appellate court will proceed to receive submissions on re-sentencing.
- ix. These guidelines will be followed by the High Court and the Court of Appeal in ongoing murder trials and appeals. They will also apply to sentences imposed under section 204 of the Penal Code before the decision in Muruatetu.

7. The effect of the above was that the apex Court clarified that the decision of Muruatetu 1, apply only in respect to sentences of murder under Sections 203 and 204 of the Penal Code. It also clarified that all offenders who had been subject to the mandatory death penalty and desired to be heard on sentence would be entitled to re-sentencing hearing.

8. The Supreme Court was categorical that an application for re-sentencing arising from a trial before the High Court could only be entertained by the High Court. It was also emphatic that where an appeal was pending before the Court of Appeal, the High Court would entertain an application for re-sentencing upon being satisfied that the appeal had been withdrawn.

9. From the record, the Applicant was convicted on the basis of the circumstantial evidence whose sequence and pattern of events led to the conclusion that the Appellant murdered the deceased and stole his bicycle. He was sentenced to suffer death as the law mandated.



10. While the Applicant has a right to have his sentenced reviewed, this Court notes in *Uvyi v Republic* (Criminal Miscellaneous Application 208 of 2018) [2021] KEHC 315 (KLR) (6 December 2021) (Ruling) the current Applicant, vide a Petition and a Notice of Motion application dated 13th November 2013 moved the Court seeking review/revision of the death sentence. The Applicant has not disclosed this fact to this Court in the current application.
11. In that application, he urged the court to set aside the death sentence and favour him with a lenient sentenced. Notably the application was supported by grounds similar to those supporting this current application. In determining that application the court(then) observed that:

“Therefore, although by the *Muruatetu 1 & 2* cases (*supra*), the mandatory death penalty was/is declared unconstitutional and an aggrieved party is entitled to Resentencing hearing, this court lacks requisite jurisdiction to hear and determine any matter heard and determined on appeal [by] the Court of Appeal. The hierarchy of Courts requires that once the matter is heard and determined on appeal by Court of Appeal from orders by the High Court, the aggrieved party may pursue a 2nd Appeal on conviction before the Court of Appeal or review of the Court of Appeal judgment of 18th November 2005 on the issue of Resentencing based on current jurisprudence on mandatory death penalty by the Supreme Court in *Muruatetu* cases *supra*.”
12. The court then proceeded to hold that " this Court lacks jurisdiction to review the sentence. The Chamber Summons is an abuse of the court process. It lacks merit and is hereby dismissed. The Applicant is at liberty to lodge a 2nd appeal on conviction or review under Section 379 of the [Penal Code](#)."
13. Based on the foregoing, this Court finds that the Applicant is making a second attempt to have his sentence reviewed, despite a similar application having already been heard and dismissed by a court of concurrent jurisdiction. It is important to note that this Court lacks the jurisdiction to entertain such a request. Accordingly, the application is dismissed for want of jurisdiction, as the matter has previously been adjudicated by a court of concurrent jurisdiction.

DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 12TH DAY OF JUNE, 2025.

RHODA RUTTO

JUDGE

In the presence of;

.....Applicant

.....Respondent

Sam Court Assistant

