



REPUBLIC OF KENYA



Woga v Republic (Petition E021 of 2018) [2025] KEHC 7683 (KLR) (4 June 2025) (Ruling)

Neutral citation: [2025] KEHC 7683 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
PETITION E021 OF 2018
RN NYAKUNDI, J
JUNE 4, 2025**

BETWEEN

MORRIS CHIEDO WOGA PETITIONER

AND

REPUBLIC RESPONDENT

RULING

1. Before this court is an application in the above-mentioned case which states as follows:
 - i. That this honorable court be pleased to determine my application for re-hearing of the sentence imposed against me
 - ii. That it is within the rules of law for the same to be considered
 - iii. That this application is grounded upon the annexed affidavit of Morris Chiedo Woga and other further grounds to be adduced at the hearing of this application thereofIt is further annexed by an affidavit sworn by the said MORRIS Chiedo Woga which states as follows:
 - i. That I am a Kenyan male adult of sound of mind hence competent to make oath
 - ii. That I was charged with an offence of robbery with violence contrary to section 296(2) of the penal code and sentenced to death which was later commuted to life sentence by the president of the republic of Kenya
 - iii. That I humbly make this application in regard to the above-mentioned articles in reliance of article 165(3) (b) of *the constitution* which empowers this honorable court to handle application of this nature
 - iv. That I am the applicant who has exhausted all appeals in which 1st appeal HCCR. APP no. 1255 of 1992 at Nairobi was dismissed by hon. Oguk(j), and Evy Owuor (j) while the same was



dismissed by Hon. Kwach (J), hon. Laka(J) and Okubasu (J) at the court of appeal Nairobi vide cr.app no. 248 of 1997

- v. That I the applicant herein was not accorded fair trial of sentencing from the trial court to the last court of appeal thus contravening article 50(2)(q) of *the constitution* while relying on the case of Douglas Muthaura Ntoribi Misc. app no. of 4 of 2015 at Meru high court, the case of murder of John Nganga Gacheru and another in HCCR. Case no. 31/016 at Kiambu high court and *William Okungu Kittiny vs rep appeal no. 56 of 2013* in *the constitution* petition no. 2 of 2011 at Kisumu Kenya court of appeal
- vi. That I the applicant herein further relying in the case of Francis Karioko Muruatetu and another vs rep (supreme court petition no. 15 of 2015) that death penalty is unconstitutional thus seeking for appropriate sentence
- vii. That the grounds to be adduced at the hearing of this application.
- viii. That I swear this affidavit in support of my application herein by way of notice of motion and what I have deponed herein is true to the best of my knowledge, information and belief

Analnsis And Determination

2. I have gone through the petitioner's application and the only issue I find for determination is whether the sentence review is merited.
3. The court's ruling in Francis Karioko Muruatetu v Republic was that sentencing is a judicial function and that the mandatory nature of the death penalty for murder was unconstitutional because it took away the courts' discretion to determine a just and proportionate punishment to impose on a convicted person. In its judgment, the court ordered that the judiciary sentencing policy be revised to reflect the court's guidelines on the obligation of courts to listen to the accused's mitigation before sentencing. The court also directed that a framework for sentence rehearing be prepared immediately to allow applicants who had been sentenced in circumstances similar to those of the petitioners to apply for sentence a rehearing from the trial court.
4. In a sentence re-hearing for the charge of murder, both aggravating and mitigating factors such as the following, would guide the court;
 1. Age of the offender;
 2. Being a first offender;
 3. Whether the offender pleaded guilty;
 4. Character and record of the offender;
 5. Commission of the offence in response to gender-based violence;
 6. The manner in which the offence was committed on the victim;
 7. The physical and psychological effect of the offence on the victim's family;
 8. Remorsefulness of the offender;
 9. The possibility of reform and social re-adaptation of the offender; and,
 10. Any other factor that the court considered relevant.



5. A glance at the Petitioner’s application clearly reveals a re-hearing of the death sentence. He has however added that the President commuted the said sentence to life imprisonment. The provisions of Article 50(2)(p) stipulate as follows:

Every accused person has the right to a fair trial, which includes the right—

- (p) to the benefit of the least severe of the prescribed punishments for an offence, if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing; and

6. As to the conditions to be satisfied for one to qualify for re-trial, Article 50(6) covers that in speaking in the following terms;

- (6) A person who is convicted of a criminal offence may petition the high court for a new trial if:
- The person’s appeal, if any, has been dismissed by the highest court to which the person is entitled to appeal, or the person did not appeal within the time allowed for appeal; and New and compelling evidence has become available.

7. The aforementioned legal provisions clearly give the Petitioner a second chance to be heard only on sentence. The duty of this court therefore is to have the application considered through the lens of Art. 50(2)(p) and (6) and determine whether the instant application is merited.

8. The court high court in Murang’a Criminal Appeal No. 17 of 2019; Simon Irungu Nyambura versus Republic in addressing the issue of life imprisonment expressed itself as follows:

“In Kenya, such sentences are maximum sentence rather than a mandatory or minimum sentence. Therefore, a court in this country has discretion to impose any lesser sentence up to the maximum if prescribed.”

9. In the same decision, the court stated that the typical blanket sentence without a capping is indeterminable, indefinite and incompletable, thereby being unreasonable, absurd and in dignifying hence in violation of article 28 of *the Constitution*. I agree with that school of thought.

10. Similar thoughts were expressed by the European Court of Human Rights in *Vinter and others v The United Kingdom* (Application Nos 66069/09, 130/10 and 3896/10) [2016] III ECHR 317 (9 July 2013). That an indeterminate life sentence without any prospect of release or a possibility of review is degrading and inhuman punishment, and that it is Similar thoughts were expressed by the European Court of Human Rights in *Vinter and others v The United Kingdom* (Application Nos 66069/09, 130/10 and 3896/10) [2016] III ECHR 317 (9 July 2013). That an indeterminate life sentence without any prospect of release or a possibility of review is degrading and inhuman punishment, and that it is

11. The court further reasoned that “if such a prisoner is incarcerated without any prospect of release and without the possibility of having his life sentence reviewed, there is the risk that he can never atone for his offence: whatever the prisoner does in prison, however exceptional his progress towards rehabilitation, his punishment remains fixed and unreviewable. If anything, the punishment becomes greater with time: the longer the prisoner lives, the longer his sentence. Thus, even when a whole life sentence is condign punishment at the time of its imposition, with the passage of time it becomes – to paraphrase Lord Justice Laws in *Wellington* – a poor guarantee of just and proportionate punishment.”

12. Essentially, life imprisonment to me is pegged on the balance of years a prisoner has till death. Imposing such a sentence will not promote the objectives of sentencing in totality. The issue of life sentence



is therefore at crossroads in our legal system for lack of proper definition. However, as noted by the court of appeal in it is not for the court to define what constitutes a life sentence or what number of years must first be served by a prisoner on life sentence before they are considered on parole. This is a function within the realm of the Legislature.

13. In the end, and in considering the objectives of sentencing in totality together with the cited legal provisions, I am inclined to interfere with the life imprisonment sentence and substitute it with 30 years' imprisonment In accordance with the provisions of section 333(2) of the criminal procedure code, the sentence shall run from the date of arrest.

14. Orders accordingly

DATED AND SIGNED AT ELDORET THIS 4TH DAY OF JUNE, 2025

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R. NYAKUNDI

JUDGE

