



**Mwangi v Republic (Miscellaneous Criminal Application E400 of 2024)
[2025] KEHC 10807 (KLR) (Crim) (24 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10807 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
MISCELLANEOUS CRIMINAL APPLICATION E400 OF 2024**

AM MUTETI, J

JULY 24, 2025

BETWEEN

DUNCAN THUKU MWANGI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant in this matter was charged with murder in Milimani High Court Criminal Case No. 75/2005.
2. The Applicant was tried, convicted and sentenced to death by the High Court.
3. The Appellant appealed to the Court of Appeal and his appeal was dismissed on the 20th September 2016.
4. The applicant has come to this court pleading for resentencing arguing that the Supreme Court decision in the *Muruatetu case* ordered that all murder convicts can petition for resentencing by the court.
5. The Applicant acknowledges that he has exhausted his right of Appeal and the only window open to him is to plead for resentencing.
6. The applicant having had his appeal heard and determined by the court of Appeal on both conviction and sentence, this court agrees with the position taken by the prosecution that the court lacks jurisdiction to entertain the matter.
7. The hierarchy of courts must be respected. Jurisdiction is everything and without it all that the court does is a nullity.



8. The applicant has acknowledged the fact that he has exhausted his right of Appeal.
9. The Muruatetu decision did not invalidate the death sentence. In appropriate cases. It may still be imposed.
10. The court has had the opportunity of looking at the judgment of the Court of Appeal rendered on 6th November 2016 by the Learned Hon. Justices of Appeal W. Ouko as he then was), A.K Murgor and S. Ole Kantai.
11. The Honorable Judges stated in the judgment
“going by the medical report on the cause of death, we entertain no doubt that intended to kill the deceased. Malice aforethought was proved”.
12. The court with that pronouncement proceeded to dismiss the Appeal in its entirety. The interpretation of the court of Appeal decision is that the death sentence imposed by the High Court was merited and since that sentence still remains constitutional in this country, the High Court cannot revisit the same where the Court of Appeal has already pronounced itself.
13. In the end this court finds that it lacks the jurisdiction to entertain the application.
14. For the avoidance of doubt, let me also say this, even if this court had jurisdiction to entertain the plea by the applicant, the circumstances surrounding the death of the deceased militate against any other sentence other than that of death.
15. To shoot and kill a man while seated in his car in an attempt to steal the motor vehicle is the most senseless act of wickedness. The applicant should thank His Excellency the President for commuting death sentences in this country. He does not deserve to live given the manner in which he executed the deceased.
16. The application is struck out.
17. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 24TH DAY OF JULY 2025.

A. M. MUTETI

JUDGE

In the presence of:-

Court Assistant: Kiptoo

Applicant Present in person

Ms Ogega for Respondent

