



**Mwaniki v Republic (Miscellaneous Criminal Application
E011 of 2024) [2025] KEHC 10490 (KLR) (17 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10490 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
MISCELLANEOUS CRIMINAL APPLICATION E011 OF 2024**

EM MURIITHI, J

JULY 17, 2025

BETWEEN

ANTHONY NDAMBIRI MWANIKI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. By an undated Notice of Motion filed on 19/2/2024 under Section 327 (2) of the [Criminal Procedure Code](#), Section 4 of the [Probation of Offenders Act](#), the applicant seeks, “review of a sentence considering that the applicant has all along been remorseful and indeed his defence can witness to this fact.”
2. In his supporting affidavit, the applicant avers that he was convicted of robbery with violence and sentenced to death. He lodged Kerugoya High Court appeal No. 238/2012 which was dismissed, but upon appeal to the Court of Appeal, the death sentence was set aside and substituted with 30 years imprisonment. He urges the court to substitute his prison sentence with a probationary one under the prison decongestion exercise. He is a first offender, a family man, remorseful, truthful and a rehabilitated person, ready to join the community and be productive to the society as well as serving as an example to the youth and agent of change and rehabilitation.
3. The respondent filed a response dated 24/3/2025 urging the applicant to apply to the commissioner of prisoner for consideration on good conduct under section 46 of the Prison Act.
4. Directions were taken that the application be heard by way of written submissions which were on filed by the applicant.
5. He urged the court to consider Article 4 of the [Probation of Offenders Act](#) and Section 333 (2) of the [Criminal Procedure Code](#), and cited Peter Njiru Njeru v Republic (2013) eKLR.



Analysis and Determination

6. In its judgment dated 29/1/2021, the Court Appeal held that; “In this appeal, although the trial court heard the appellants’ mitigating factors, its hands were tied, it had to pass the death sentence. For that reason alone, we are inclined to set aside the death sentence, which were hereby do, and substitute therefor sentence to imprisonment to a term of thirty years with effect from 6th December 2013 when the initial sentence was passed.”
7. This court finds that the applicant already benefitted from the Court of Appeal’s leniency when it substituted his death sentence with a term of imprisonment for 30 years. In addition, the Court of Appeal expressly determined the commencement date of the said sentence, as mandated by the provisions of section 333 (2) of the *Criminal Procedure Code*.
8. The Supreme Court of Kenya has in recent decisions of Republic v Manyeso [2025] KESC 16 (KLR) and Republic v Ayako (Petition E002 of 2024) [2025] KESC 20 (KLR) (11 April 2025) (Judgment), settled the issue that the Court has no authority to apply the Muruatetu decision in other capital offences such as the robbery with violence under section 296(2) of the *Penal Code*, and this Court does not have before it a petition of the determination of the constitutionality of the death sentence in robbery with violence cases as happened in Muruatetu case.
9. Consequently, there is no further relief that this court can grant.

Orders

10. Accordingly, for the reasons set out above, this court finds the undated application filed on 19/2/2024 to be without merit and it is declined.

Order accordingly.

DATED AND DELIVERED THIS 17TH DAY OF JULY 2025.

EDWARD M. MURIITHI

JUDGE

Appearances

Applicant in person.

Mr. Mamba for the DPP/Respondent.

