



REPUBLIC OF KENYA



**KENYA LAW**  
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**Okuro v Republic (Criminal Revision E550 of 2024)  
[2025] KEHC 9462 (KLR) (3 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9462 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CRIMINAL REVISION E550 OF 2024**

**PN GICHOHI, J**

**JULY 3, 2025**

**CRIMINAL APPEAL NO. 54 OF 2010 AT NAKURU,  
H.C.CR. APPEAL NO. 131 OF 2009 AT NAKURU  
(ARISING FROM CR. CS NO 9969 OF 2007 AT CM'S COURT NAKURU)  
IN THE MATTER OF ARTICLES 22(1), 23, 25(C), 27, 28, 50(2)(P), 159, 160  
AND 165 OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF RAMADHAN & 8 OTHERS V GENERAL &  
ANOTHER (PETITION 5 OF 2022 CONSTITUTIONAL PETITION 6 OF  
2022 (CONSOLIDATED)) 2024 KEHC 1173 (KLR) (6 FEBRUARY 2024)  
(JUDGMENT)**

**AND**

**IN THE MATTER OF SECTION 296(2) OF THE PENAL CODE CAP 63  
LAWS OF KENYA**

**AND**

**IN THE MATTER OF SECTIONS 216 AND 329 OF THE CRIMINAL  
PROCEDURE CODE**

**AND**

**IN THE MATTER OF PARAGRAPHS 4.8.14, 4.8.16, 4.8.17, 4.8.18, 4.8.21,  
4.8.23, 4.8.25 AND 4.8.26 OF THE REVISED SENTENCING POLICY  
GUIDELINES (2023)**

**AND**

**IN THE MATTER OF SECTIONS 216 AND 329 OF THE CRIMINAL PROCEDURE CODE**



AND

IN THE MATTER OF PARAGRAPHS 4.8.14, 4.8.16, 4.8.17, 4.8.18, 4.8.21, 4.8.23,  
4.8.25 AND 4.8.26 OF THE REVISED SENTENCING POLICY GUIDELINES (2023)

BETWEEN

PAUL JAKADERO OKURO ..... APPLICANT

AND

REPUBLIC ..... RESPONDENT

### RULING

1. By undated Notice of Motion filed on 5<sup>th</sup> February, 2025, the Applicant herein sought for the following Orders: -
  1. Spent.
  2. The mandatory death sentence prescribed by section 296(2) of the *Penal Code*, and imposed on the Applicant, and later commuted to life by H.E the president is unconstitutional as it was declared by the constitutional court in *Ramadhan & 8 others v General & another* (Petition 5 of 2022 Constitutional Petition 6 of 2022 (Consolidated)) 2024 KEHC 1173 (KLR) (6 February 2024) (Judgment) since it fetters the discretion of judicial officers to consider the unique facts and circumstances of an offence in awarding sentences.
  3. The mandatory death sentence imposed on the Applicant be reviewed downwards taking into consideration the facts and circumstances of the case and the gains achieved by the Applicant towards rehabilitation in the seventeen (17) years he has been in lawful custody since the date of arrest.
  4. That, should the eventual sentence as revised result in a balance of three (3) years or less, may he honorable court be pleased to order that such sentence be served under probation.
  5. Any other order which the court deems fit in the interest of justice.
2. The application is supported by the grounds on the face of the Notice of Motion and supported by his sworn Affidavit. The Applicant seeks a review of his death sentence, which was commuted to life imprisonment. He argues that the mandatory death sentence under Section 296 (2) of the *Penal Code* is unconstitutional, citing the *Ramadhan & 8 others v General & another* case (2024 KEHC 1173) which declared such mandatory minimum sentences unconstitutional.
3. He was convicted and sentenced to death for robbery with violence in 2007, and his appeals to the High Court and Court of Appeal were dismissed. He further contends that the life imprisonment, to which his sentence was commuted, is also unconstitutional as it denies a convict the right to be heard in mitigation, violating Article 27 of the *Constitution* on equality.
4. He states that he has been in custody for 17 years and states he has undergone rehabilitation, is deeply remorseful, and was a first offender and sole breadwinner. He argues that the objectives of sentencing include; retribution, deterrence, rehabilitation, community protection, denunciation, and reintegration, which he has met in his case.



5. He makes references to international law principles and cites *Vinter and others v The United Kingdom*, Application Nos 66069/09, 130/10 and 3896/10 [2016] III ECHR 317, to submit that an indeterminate life sentence without prospect of release or review is inhumane. He therefore asserts that the Court has jurisdiction to hear his application under Article 165 of the *Constitution* and in light of the decision in *Ramadhan case* (*supra*).
6. The Director of Public Prosecutions, through James Kihara, filed a Replying Affidavit sworn on 8<sup>th</sup> April, 2025 opposing the application. He confirms the Applicant's conviction and appeals history, acknowledging the commutation of the death sentence to life.
7. However, he argues that the *Ramadhan case* was a petition, not a revision, and its declarations are not a blanket order to be applied universally, requiring each individual to approach a competent court for relief. He therefore asserts that this Court lacks jurisdiction to revisit a decision made by a superior Court and therefore, the application herein is an abuse of court process and lacks merit.
8. He suggests that the challenge to the life sentence should be brought before a Constitutional Court.

### **Applicant Submissions**

9. He elaborates on the legal basis for the application maintaining that the mandatory death sentence, as prescribed by Section 296(2) of the *Penal Code*, is unconstitutional because it fetters the discretion of judicial officers to consider the unique facts and circumstances of an offence in awarding sentences.
10. Citing international conventions including the The *International Covenant on Civil and Political Rights* ICCPR, which recommend against the death penalty and for the possibility of rehabilitation and release for life sentences, he heavily relies on the case of *Ramadhan & 8 others v General & another* (Petition 5 of 2022 Constitutional Petition 6 of 2022 (Consolidated)) 2024 KEHC 1173 (KLR), which declared such mandatory minimum sentences unconstitutional. He emphasises that this decision has not been appealed and therefore remains good law.
11. He further relies on the Court of Appeal decisions in *Manyeso v Republic* (Criminal Appeal 12 of 2021) 2023 KECA 827 (KLR) (7 July 2023) (Judgment) at Malindi and *Ayako v Republic* (Criminal Appeal 22 of 2018) 2023 KECA 1563 (KLR) (8 December 2023) (Judgment) at Kisumu and submitted that all these cases declared life imprisonment unconstitutional on the grounds that it denies a convict the opportunity to be heard in mitigation, unlike those facing lesser sentences.
12. He therefore asserts that life imprisonment is unjustifiable, discriminatory, unfair and repugnant to the principle of equality before the law under Article 27 of the *Constitution*.
13. The Applicant submits that the European Court of Human Rights case of *Vinter and others* (*supra*) held that an indeterminate life sentence without any prospect of release or a possibility of review is degrading and inhumane punishment, establishing a principle in international law that all prisoners, including those serving life sentences, be offered the possibility of rehabilitation and the prospect of release if that rehabilitation is achieved.
14. He highlights that he has been in lawful custody for seventeen (17) years and has taken full advantage of rehabilitation programs, becoming sufficiently rehabilitated and a law-abiding person, as evidenced by annexed certificates and recommendation letters. He states he is deeply remorseful.
15. He contends that the objectives of sentencing are; retribution, deterrence, rehabilitation, community protection, denunciation, and reintegration, which he has met through his time in custody.



16. He asserts that he should benefit from resentencing in a similar manner as held by various courts in; Criminal Revision No. E027 of 2024 *Joseph Kamau Gichuki v Republic*, Criminal Petition No. E001 of 2022 *Peter Gikonyo Nyoike v Republic*, Criminal Petition No. E063 of 2021 *Robin Analo Kiyai & Tito Wekesa v Republic*, Petition No. E005 of 2021 *Michael Kamau v Republic*, and Petition No. E002 of 2022 *Peter Mungai Kanyonyo v Republic*. He maintains that this Court has sufficient jurisdiction under Article 165 of the *Constitution* and the jurisdiction donated by the Constitutional Court in the *Ramadhan case* to hear this application and grant the orders sought.

### Analysis and Determination

17. After considering the Application, affidavits and submissions herein, the only issue for determination herein is whether the death penalty which has since been commuted to life imprisonment should be revised. However, in the case of *Muruatetu & another v Republic; Katiba Institute & 4 others (Amicus Curiae)* (Petition 15 & 16 of 2015) [2021] KESC 31 (KLR) (6 July 2021) (Directions) the Supreme Court held that: -

“ 15. To clear the confusion that exists with regard to the mandatory death sentence in offences other than murder, we direct in respect of other capital offences such as treason under section 40 (3), robbery with violence under section 296 (2), and attempted robbery with violence under section 297 (2) of the *Penal Code*, that a challenge on the constitutional validity of the mandatory death penalty in such cases should be properly filed, presented, and fully argued before the High Court and escalated to the Court of Appeal, if necessary, at which a similar outcome as that in this case may be reached. Muruatetu as it now stands cannot directly be applicable to those cases.”

18. Similarly, in the case of *William Oongo Arunda (hitherto referred to as Patrick Oduor Ochieng) v Republic* (Criminal Appeal 49 of 2020) [2022] KECA 23 (KLR), it was held as follows: -

“ 30. As regard sentence, and as already noted, on 6th July 2021 the Supreme Court in *Francis Karioko Muruatetu & another v. Republic; Katiba Institute & 5 others (Amicus Curiae)* directed that the judgment of the Court in that case cannot be the basis for stating that all provisions of the law prescribing mandatory or minimum sentences are unlawful. The implication thereof is that upon conviction, courts must pass the mandatory sentences that are prescribed. We are therefore unable to interfere with the sentence meted out by the trial court and upheld by the High Court in this matter.”

19. Further still in both *Republic v Manyeso* (Petition E013 of 2024) [2025] KESC 16 (KLR) and *Republic v Ayako* (Petition E002 of 2024) [2025] KESC 20 (KLR), the Supreme Court held in part that the Court of Appeal acted ultra vires and usurped legislative powers by substituting a life imprisonment sentence with a term sentence as constitutionality of life imprisonment had not been initially litigated at the High Court, which is the court of first instance for constitutional interpretation.
20. The Supreme Court emphasised that defining the parameters of sentences, including life imprisonment, is a function of Parliament, not the Judiciary, and that such a decision by the Court of Appeal arbitrarily created law without legislative involvement or public participation.



21. Indeed, in *Ramadhan & 8 others case* (*supra*) relied on by the Applicant, Olga Sewe J, declared mandatory nature of the death penalty as provided for under Section 296(2) and 279(2) of the *Penal Code* unconstitutional.
22. However, in light of the decision by the Supreme Court's holding that mandatory sentences are lawful, and considering the holding of the Supreme Court that an indeterminate sentence cannot be converted to a term sentence by the Courts, this Court find no basis to interfere with the decision of the appellate Court in this case. Consequently, the Applicant's Notice of Motion filed on 5<sup>th</sup> February, 2025 seeking revision of his sentence is dismissed.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 3<sup>RD</sup> DAY OF JULY, 2025.**

**PATRICIA GICHOHI**

**JUDGE**

In the presence of:

Paul Jakadero Okuro- Applicant

Mr. Kihara for Respondent

Ruto - Court Assistant

