



REPUBLIC OF KENYA



**Onchoki v Republic (Criminal Revision E119 of 2024)
[2025] KEHC 9760 (KLR) (3 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9760 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL REVISION E119 OF 2024**

JM NANG'EA, J

JULY 3, 2025

BETWEEN

SIMON MORARA ONCHOKI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant was charged with and convicted of the offence of Violent Robbery Contrary to Section 296 (2) of the *Penal Code* before the Chief Magistrate's Court in Naivasha. He was sentenced to suffer death in Criminal Case Number 1339 of 2003 as mandated by the law. His appeal to this court vide Criminal Appeal No. 561 of 2003 was unsuccessful. A second appeal was lodged in the Court of Appeal through File No. 60 of 2010 but was also wholly dismissed, provoking this application dated 8th March 2024 seeking re-sentencing.
2. The following orders are sought in the Application;
 1. Spent.
 2. That this honourable court be pleased to review the mandatory death sentence commuted to life imprisonment meted upon the applicant and to proceed and pass a determinate / prison term upon the applicant. (sic)
 3. That this honourable court be pleased to make a finding and declare that the 22 years' incarceration of the applicant be deemed and computed as sentence served. (sic)
 4. That this honourable court be pleased to call for a pre-sentencing report by the probation officer and offer the applicant an opportunity to tender his mitigation before re-sentencing.
 5. That the honourable court be pleased to grant any orders that deem fit and just in the circumstances. (sic)



6. The costs of the Application be provided for.
3. The Applicant restates the factual position of this matter in his affidavit in support of the Application. He, however, ventures to depose to legal issues which are neither based on his personal knowledge nor advice as required by the law governing swearing of affidavits.
4. Both the Applicant and the Prosecution Counsel put in written submissions which I have carefully perused against the Application.
5. By dint of the recent Supreme Court's case of *Joshua Gichuki Mwangi & Others* in Petition No. E018 of 2023 relied upon inter alia by the Prosecutor in opposition to the Application, any challenge on the constitutional validity of mandatory sentences for other capital offences, other than murder in respect of which the Supreme Court has already delivered itself in the famous Muruatetu case, is welcome for determination by the High Court and the Court of Appeal where necessary, in the event of an appeal. This challenge is, however, to be mounted in a proper substantive Constitutional Petition and not vide a criminal application.
6. The Applicant makes detailed submissions herein on what he considers as unconstitutionality of a mandatory death sentence for a violent robbery charge of which he has been convicted. The court has been referred to many decisions of this court including *Kathewa Laichena V. Republic* (2018) eKLR and *William Okungu Kittiny V. Republic* (2018) eKLR which applied the reasoning in the Muruatetu case to allow sentences other than mandatory or minimum sentences provided for by some laws including the *Penal Code* and the *Sexual Offences Act*.
7. In my view as observed hereinabove, the Applicant cannot raise such a weighty constitutional issue in a Miscellaneous Criminal Application such as before the court. As held by the Supreme Court in the case of the said Joshua Gichuki Mwangi supra, a proper substantive Constitutional Petition should be filed in the High Court and where necessary, escalated to the Court of Appeal and perhaps to the Supreme Court for exposition of a final legal position. Because of the importance of such a Petition, proper Respondents would include the Director of Public Prosecution, the Attorney General and other Interested Parties as may be identified.
8. This court will not therefore treat this application as the Petition contemplated by the Supreme Court in its cited decision.
9. For the reason given hereinabove that death sentences in violent robbery cases have not been invalidated, this court has no jurisdiction to mete out a different sentence. The procedure for challenging mandatory death sentences in capital offences, other than murder has been explained in the case of Joshua Gichuki Mwangi above referred to.
10. The Application is accordingly dismissed in its entirety.

RULING DELIVERED THIS 3RD DAY OF JULY, 2025 IN THE PRESENCE OF:

J. M. NANG'EA, JUDGE.

The Prosecution Counsel, Mr Wakasyaka

The Applicant, present (online)

Court Assistant (Jeniffer)

