



REPUBLIC OF KENYA



KENYA LAW
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**Kazungu v Republic (Petition E001 of 2025)
[2025] KEHC 12632 (KLR) (17 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12632 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
PETITION E001 OF 2025
A MABEYA, J
SEPTEMBER 17, 2025**

BETWEEN

IDD HASSAN KAZUNGU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Idd Hassan Kazungu was charged with the offence of robbery with violence contrary to section 296(2) of the Penal Code. It was alleged that on 1/12/2012 at Nyawita Sub-location in Kisumu East District within Kisumu County, while armed with dangerous weapons, namely, a panga and a metal rod, robbed Fredrick Otieno Ayieko of his laptop, 2 mobile phones make Nokia and Sumsung, 2 pairs of shoes, and other items all valued at Kshs.60,200/- and immediately before or after the time of such robbery, threatened to use violence on the said Fredrick Otieno Ayieko.
2. He denied the charge, was tried, found guilty and was convicted and sentenced to death. His appeal to the High Court was dismissed. His second appeal to the Court of Appeal was dismissed on 9/2/2024.
3. In dismissing his appeal on sentence, the Court of Appeal (Kiage, Tuiyott and Ngugi JJA) held at paragraph 35: -

“On Sentence, we note that the appellant proffered no ground of appeal against it. It is just as well because, as the law stands after Francis Karioko Muruatetu & Another vs Republic, mandatory death sentence prescribed under section 296(2) of the Penal Code for the offence of robbery with violence is still legal. Differently put, the appellant could not find refuge in the Supreme Court decision in Francis Karioko Muruatetu & Another vs Republic (Muruatetu 1), as that decision only addresses contrary to section 203 and 204 of the



Penal Code. Muruatetu 2 directed that the decision in Muruatetu 1 does not apply to the mandatory death sentence provided under section 296(2) of the Penal Code.”

4. In September, 2024 the applicant took out a Motion on Notice to challenge the death sentence as being unconstitutional, that he be resented after he has been accorded an opportunity to mitigate. Basically, the applicant was seeking a review of his sentence. The State, through Ms. Kigali opposed the Motion.
5. The Court has considered the averments of the applicant. It notes that before it is a Motion on Notice that is challenging his sentence. The Court of Appeal having pronounced itself on his sentence as set out above, this Court is bereft of any jurisdiction to re-look at the matter. This Court cannot review a decision of the Court of Appeal.
6. If the applicant is desirous of challenging the death sentence under section 296(2) of the Penal Code, let him take out a proper petition in the manner of Muruatetu case as provided in *the Constitution* and not by way of Motion for review.
7. Accordingly, the undated Motion of September, 2024 is without merit and is hereby dismissed.
It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 17TH DAY OF SEPTEMBER, 2025.

A. MABEYA, FCI Arb

JUDGE

