



**Ngetich v Republic (Miscellaneous Criminal Application  
E060 of 2023) [2024] KEHC 2596 (KLR) (13 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2596 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
MISCELLANEOUS CRIMINAL APPLICATION E060 OF 2023**

**JK SERGON, J**

**MARCH 13, 2024**

**BETWEEN**

**JACOB KIPLANGAT NGETICH ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant was charged and convicted for the offence of murder contrary to section 203 as read with section 204 of the *Penal Code* in the High Court Criminal Case No. 13 of 2008 at Kericho and sentenced to death on 30th July, 2010. The Applicant being dissatisfied with the decision of the trial Court, appealed to the Court of Appeal. Subsequently, the appeal against both conviction and sentence was dismissed and the death sentence upheld.
2. The Applicant lodged a resentencing petition to the High Court at Kericho vide *Petition No. 39 of 2019* whereby the death sentence was substituted with life imprisonment.
3. The Applicant therefore filed the instant application seeking to have this court review the death sentence imposed by the trial Court and confirmed by the Court of Appeal and later commuted to life imprisonment to a more lenient sentence pursuant to article 50 (2) (p) (q) of the *Constitution* and the Supreme Court decision in *Francis Karioko Muruatetu & Another v Republic* (2017) eKLR which declared the mandatory nature of the death sentence as unconstitutional and consequently allowed those aggrieved to lodge resentencing applications to the High Court.
4. The applicant contended that he was initially sentenced to a mandatory sentence as prescribed by section 204 of the *Penal Code* without consideration of mitigation or the unique facts and circumstances of his case. The Applicant conceded that the death sentence was subsequently substituted to a life imprisonment. However, in support of the instant application he cited the Court



of Appeal case of *Manyeso v Republic* (Criminal Appeal 12 of 2001 ) [2023] KECA 827 (KLR) (7 July, 2023) (Judgment) which declared life sentences as unconstitutional.

5. The Applicant was also seeking to have the time spent in custody be computed into the eventual sentence awarded pursuant to section 333 (2) of the *Criminal Procedure Code* and the decision of Odunga J (as he then was) in *Vincent Sila Jona & 87 Others v Kenya Prison Service & 2 Others* (Petition 15 of 2020) [2021] KEHC 457 (KLR) which espoused Court to consider the time spent in custody pursuant to section 333 (2) of the *Criminal Procedure Code*.
6. The prosecution did not oppose the application.
7. The following legal provisions empower this court to entertain re-sentencing application under Article 165 of the *Constitution* which clothes the High Court with jurisdiction to hear and determine applications for redress of a denial, violation or infringement of or threat to, a right or fundamental freedom in the Bill of rights as well as Article 50 (2) (p) (q) as read with Article 50 (6) (a) and (b) of the *Constitution*.
8. I have considered the instant application for review of the life imprisonment sentence, that was meted out to the applicant and the recent Court of Appeal decision in the case of *Julius Kitsao Manyeso v Republic* [2020] eKLR where it was held that the imposition of a mandatory indeterminate life sentence, was discriminatory, inhumane and a violation of the right to human dignity. It should be noted that the instant application is not an Appeal. The applicant is seeking for re-sentencing. An Application for re-sentencing was heard and determined by the High Court in *Petition No.39 of 2019* whereby the death sentence imposed was reviewed and substituted by Life Imprisonment. This Court having considered a similar application is entered *funtus officio*. The Court cannot go back and consider the same. The instant application amounts to an abuse of the Court process. This application is ordered dismissed.

**DATED, SIGNED AND DELIVERED AT KERICHO THIS 13<sup>TH</sup> DAY OF MARCH, 2024.**

**J.K. SERGON**

**JUDGE**

In the presence of:-

C/Assistant - Rutoh

Prosecutor – Mr. Musyoki

Applicant – Not present

