



REPUBLIC OF KENYA



**Gichovi v Republic (Criminal Petition E100 of 2022)
[2024] KEHC 5099 (KLR) (9 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 5099 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CRIMINAL PETITION E100 OF 2022
RM MWONGO, J
MAY 9, 2024**

BETWEEN

ERASTUS MWANIKI GICHOVI PETITIONER

AND

REPUBLIC RESPONDENT

JUDGMENT

1. The Petitioner was charged and convicted on 15.3.2013 with the offence of Robbery with Violence Contrary to Section 296 (2) of the [Penal Code](#). Following conviction, the Petitioner was sentenced to death.
2. His appeal in the High Court is HCCRA No 100 /2013 consolidated with CR. Appeal No 101/2013 was dismissed. He appealed to the Court of Appeal in Nyeri Criminal Appeal No 114 of 2016, but upon withdrawing the appeal, it was dismissed.
3. The Petitioner’s sentence was commuted to life imprisonment by the President in 2009.
4. In his present application, the applicant seeks a definite sentence by way of sentence review. It is in paragraph 10 of his supporting affidavit that the crux of the alleged unconstitutionality of his life sentence is stated as follows:

“10. That the imposed death sentence was commuted to life imprisonment by the President in the year 2009 and the indefinite life sentence has total disenfranchised my ability to have future based prospect of release hence contravened (sic) Article 25 (c), 27 (1) and 28 of the [Constitution](#)”.

5. The state has submitted that the Petitioner’s sentence should be commensurate to the underlying factors of aggravation and or mitigation of the offence. Further the state urges that the Petitioner’s conduct whilst in prison should also be taken into account.



6. I note that the trial court found that the Petitioner using axes and pangas had robbed the victims of a motor vehicle KAX 749 G, TV set, gas cooker, assorted items and mobile phone all valued at Kshs 540,000/=. The victim sustained cuts in the head during the robbery.
7. The medical examination report of the complainant, Emily Njoka shows that she was physically and sexually assaulted by the assailants including the Petitioner. She had swelling on the head and back tenderness on both sides of the chest, swollen palm and knee joint, and tearing of the vagina. These injuries reflect the brutality of the attack on the victim by the Petitioner and his co-accused. These findings were confirmed by the court.
8. The court has noted these aggravating and mitigating factors, and is obliged to take them into consideration into consideration in determining the length of the sentence that ought to be meted.
9. The Court of Appeal in the case of *Julius Kitsao Manyeso* [2020] eKLR in its decision dated 7.7.2023 held that imposition of a mandatory indeterminate life sentence constitutes an unjustifiable discrimination, and is unfair and repugnant to the principle of equality before the law under Article 27 of the *Constitution*. The sentence Applicant is serving is unconstitutional.
10. I have taken into consideration the circumstances of the robbery.
11. Accordingly, I hereby substitute the sentence of life sentence with a sentence of twenty-five (25) years commencing the date of Petitioner arrest.
12. Orders accordingly.

DATED THIS 9TH DAY OF MAY, 2024

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R. MWONGO

JUDGE

Delivered in the presence of:

1. Erastus Mwaniki Gichovi - Applicant at Manyani Prison
2. Mamba for State
3. Murage, Court Assistant

