



**Karanja v Republic (Miscellaneous Criminal Application  
E115 of 2023) [2024] KEHC 10541 (KLR) (2 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10541 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
MISCELLANEOUS CRIMINAL APPLICATION E115 OF 2023**

**A MSHILA, J  
AUGUST 2, 2024**

**BETWEEN**

**MOSES NDUNGU KARANJA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant has premised his application under the provisions of Articles 27, 50(2)(p)(q) and 165(6) of the Constitution 2010; and is seeking a re-hearing of his death sentence on the grounds that it is indeterminate and inhumane and not in line with the decision rendered by the Court of Appeal in Mombasa Petition no 97 of 2021.
2. The Applicant was charged and convicted for the offence of Robbery with Violence Contrary to Section 296(2) of the Penal Code in Criminal Case no 2032 of 2006 Kiambu CMs Court. After a full hearing he was found guilty and convicted of the offence and the sentence imposed was the mandatory DEATH sentence. Being aggrieved he lodged an appeal to the Kiambu High Court *vide* HCRA no 276 of 2009 and a second appeal thereafter to the Court of Appeal *vide* COA sitting in Nairobi; both appeals were dismissed and the sentence was affirmed.
3. The Applicant now seeks a review of the sentence to a lenient and definite sentence.
4. At the hearing hereof, the Applicant was unrepresented and relied on his supporting affidavit which he briefly highlighted; Mr Gacharia appearing for the State was not opposed to the application but requested that the Kiambu lower court record and a Victim Impact Report be availed to assist this court in making its decision in determining the appropriate sentence to be considered.



## **Applicant's Case**

5. He was charged and convicted for the offence for the offence of Robbery with Violence Contrary to Section 296(2) of the [Penal Code](#) in Criminal Case no 2032 of 2006 Kiambu CMs Court.
6. He was found guilty and convicted of the offence and the sentence imposed was the mandatory DEATH sentence. Being aggrieved he lodged an appeal to the Kiambu High Court vide HCRA no 276 of 2009 and a second appeal thereafter to the Court of Appeal *vide* COA no 13 of 2020 sitting in Nairobi; both appeals were dismissed and the sentence was affirmed.
7. The court was seized of competent jurisdiction to hear and determine this matter; he had been sentenced to a mandatory sentence as prescribed without due consideration of mitigation or the unique facts and circumstances of his case
8. He prayed to be granted a definite and lenient sentence; and also prayed that the period spent in remand be taken into consideration pursuant to the provisions of Section 333(2) of the [Criminal Procedure Code](#);

## **Issues for Determination**

9. After hearing the rival submissions of the petitioner this court framed two issues for determination which were :
  - i. Whether the Petitioner is deserving of a resentencing of his sentence.
  - ii. Whether the Petitioner was deserving of the benefits of Section 333(2) of the [Criminal Procedure Code](#).

## **Analysis**

10. The court has had the occasion to peruse the Sentence Review Report dated 25/06/2024 prepared by the Probation Office to assist the court in making a determination; the report confirms the age of the applicant as 47 years and has spent 18 years in prison; when he committed he was young and used to abuse alcohol which would deter his sense of judgment and decision making; that during this period in prison he had time to reflect on his actions and was deeply remorseful and that he was now fully reformed and had been introduced to Scripture Theology and Spirituality in preparing himself to re-enter back into society and had prayed and sought forgiveness from the victim's family; and the victims' relatives had forgiven the applicant.
11. That the applicant still had close family ties and believe the time he has spent in prison had a positive impact on his life; they were ready to help in his rehabilitation journey and to ensure he becomes a better person; the community had since forgiven him and recommended a non-custodial sentence to help him in his rehabilitation. The prison authorities positively recommended the petitioner's release citing that he is no longer a threat to society.
12. It is this court's view that when considering to review the sentence it must take into consideration the following factors; firstly, the gravity of the offence and its prevalence; secondly, the facts and circumstances of the case and whether the applicant is repentant and genuinely remorseful for the unlawful act.
13. Taking into consideration the circumstances in which the offence was committed this court notes that the applicant and his accomplices were charged with many other offences inclusive of rape and indecent acts to an adult; offence was carried out by a gang of youth and the group executed the attack on the



victims home between 1-1.30 am; when they were sure that they were indoors and asleep and were in no position to escape; and the crime was executed in the most inhuman and degrading manner

14. Indeed, the applicant realizes the gravity of the offence he committed and he is sorry and has demonstrated genuine remorse for what he did.
15. The aggravating circumstances are found to far outweigh the applicant's mitigating factors set out in the report; despite the mitigating factors the gravity and prevalence of such offences has also to be taken into consideration; and this court is of the considered view that there is a need to still impose a custodial sentence that will also act as a deterrent to others who may be tempted to commit similar offences;
16. Nevertheless, the report filed herein is found to favour the applicant and in the circumstances this court is satisfied the applicant is deserving of only a review and reduction of life sentence imposed.

### **Findings and Determination**

17. For the forgoing reasons this court finds that the Petitioners Petition for re-sentencing is meritorious; and finds the most appropriate sentence for the offence committed to be a custodial term reduced to thirty (30) years;
18. This court finds that the Petitioner is not entitled to the benefit of Section 333(2) of the [\*Criminal Procedure Code\*](#).
19. The thirty (30) years shall run with effect from the date of sentencing being 22/02/2008.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 2<sup>ND</sup> DAY OF AUGUST, 2024.**

**A.MSHILA**

**JUDGE**

In the presence of;

Mourice – Court Assistant

Gacharia – For the State

Moses- present from Kamiti

