



**Buluma v Republic (Criminal Petition E005A of 2022)
[2024] KEHC 12612 (KLR) (22 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12612 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CRIMINAL PETITION E005A OF 2022
WM MUSYOKA, J
OCTOBER 22, 2024**

BETWEEN

PATRICK MAKOKHA BULUMA PETITIONER

AND

REPUBLIC RESPONDENT

RULING

1. I delivered a ruling herein on 9th September 2023, where I put off determination of the petition herein, as it appeared that the petitioner had filed an appeal at the Court of Appeal, but the determination of that appeal had not been disclosed.
2. The petition was seeking review of the death sentence imposed by the trial court, in view of the recent jurisprudence, on the death penalty. I noted that the death sentence was no longer hanging over the head of the petitioner, as it had been commuted to life imprisonment by the President of the Republic, on 3rd August 2009, according to the petition. I ruled that I would only entertain the petition on account of the decision of the Court of Appeal, in Julius Kitsao *Manyeso vs. Republic Malindi CACRA No. 12 of 2021* (Nyamweya, Lesiit & Odunga, JJA), to the effect that the sentence of life imprisonment is unconstitutional, and, to facilitate that, I directed that records from the Court of Appeal, in Kisumu CACRA No. 291 of 2012, be made available, or otherwise the petitioner to update the court on the status of that appeal.
3. When the matter was mentioned on 15th April 2024, the petitioner indicated that he had no appeal, at the Court of Appeal. He stated that he had filed his written submissions. Whereupon the respondent stated it would also file theirs. Both sides did file written submissions. I have read through them, and noted the arguments made.
4. The petitioner was convicted of robbery with violence, and was sentenced to death, by the trial court, in Busia CMCCRC No. 1251 of 2007, on 24th November 2008. He had filed an appeal at the High



Court, being Busia HCCRA No. 11 of 2009, but his appeal was dismissed, and the conviction and sentence for robbery with violence affirmed and confirmed, on 10th November 2014.

5. The Court of Appeal, in Julius Kitsao *Manyeso vs. Republic Malindi CACRA No. 12 of 2021* (Nyamweya, Lesiit & Odunga, JJA), declared the sentence of life imprisonment unconstitutional; and in Evans Nyamari *Ayako vs. Republic Kisumu CACRA No. 22 of 2018* (Okwengu, Omondi & J. Ngugi, JJA), it was declared that life imprisonment translated to 30 years.
6. In the instant case, there is no material to establish that the Court of Appeal has interfered with the sentence of life imprisonment, as commuted by the President. The petitioner should, therefore, benefit from the pronouncements by the Court of Appeal, in Julius Kitsao *Manyeso vs. Republic Malindi CACRA No. 12 of 2021* (Nyamweya, Lesiit & Odunga, JJA) and Evans Nyamari Ayako vs. Republic Kisumu CACRA No. 22 of 2018 (Okwengu, Omondi & J. Ngugi, JJA). The sentence of life imprisonment is, therefore, hereby set aside, and it shall be substituted with a definite sentence of imprisonment, guided by Evans Nyamari *Ayako vs. Republic Kisumu CACRA No. 22 of 2018* (Okwengu, Omondi & J. Ngugi, JJA).
7. From the trial court record, the petitioner was a sole robber, who accosted his victim in the evening, hit her on the back with a panga, robbed her of her mobile phone, raped her and beat her some more. The circumstances of the robbery put the victim in grave danger, for if something were to go wrong, she could have been fatally injured with the panga. Consequently, I shall sentence the petitioner, as I hereby do, to 30 years in prison. This file to be closed. Orders accordingly.

RULING DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA ON THIS 22ND DAY OF OCTOBER 2024.

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Mr. Patrick Makokha Buluma, the petitioner, in person.

Advocates

Mr. Onanda, instructed by the Director of Public Prosecutions, for the respondent.

