



**Mwangi v Republic (Criminal Revision E018 of 2024)
[2024] KEHC 12975 (KLR) (16 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12975 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CRIMINAL REVISION E018 OF 2024
DKN MAGARE, J
OCTOBER 16, 2024**

BETWEEN

SAMUEL KAMANGA MWANGI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. This is a ruling over a Notice of Motion dated 3/4/2024 and filed by the Applicant on the same date. The Notice of Motion was brought pursuant to Article 50(2)(q) and 165(3)(6) of the Constitution and sections 216, 327(2), 362, 264 and 329 of the Criminal Procedure Code and seeks the following prayers. The motion seeks the following orders: -
 - a. That the honourable court be pleased to hear my prayers since it is within the rule of law under articles 50(2)(q) and 165(3)(6) of the Constitution, whereby this court has unlimited jurisdiction in both civil and criminal matters.
 - b. That I was charged with the offence of robbery with violence c/sec. 296(2) of the PC at Mukurweini. I appealed to high court and the appeal was dismissed by Hon. Ngaah (J) and Hon. Wakiaga (J) on 26th September, 2014.
 - c. That this application is grounded upon annexed affidavit of Samuel Kamanga Mwangi and other grounds to be adduced at hearing of this application.
 - d. That may this honourable court be pleased to review my sentence as per above referred provisions of law and allow me to bring further mitigation in support of my application in the interest of justice.
2. The application is premised on the grounds on the face thereof and supported by the affidavit of the Applicant which claims as follows:



- a. The Applicant was charged with robbery with violence contrary to Section 296 (2) of the [Penal Code](#) based on which he was convicted and sentenced to serve death.
 - b. The Applicant appealed against the conviction and sentence but the appeal was dismissed by the two judge bench of this Court vide the Judgment dated 26/9/2014.
 - c. The Applicant had appealed to the Court of Appeal but he subsequently withdrew the appeal.
 - d. The Applicant is seeking for rehearing of the sentence only.
3. The application was opposed, though no response was filed.

Analysis

4. The parties left the court to make its decision on the basis of the documents on the file. The sentence is not being reviewed for legality as this court has no jurisdiction to do so given that the High Court had already pronounced itself on this aspect. However, on 21/7/2023, the President commuted the sentence of all capital offenders as at 21/11/2022 Vide Vol. CXXV—No 168 of 21st July, 2023. The gazette notice read as follows: -

Commutation of Death Sentence

It is notified for general information of the public that in exercise of the powers conferred by Article 133 of the [Constitution](#) of Kenya and section 23 (1) of the [Power of Mercy Act](#), 2011, the President and Commander-in-Chief of the Defence Forces of the Republic of Kenya, upon the recommendation of the Advisory Committee on the Power of Mercy, commuted the death sentence imposed on every capital offender as at the 21st November, 2022, to a life sentence.

Dated the 19th July, 2023.

J. B. N. Muturi,

Attorney-General and Chairperson, Power of Mercy Advisory Committee.

5. Effectively the Applicant's sentence became a life sentence. This is a matter the court took judicial notice of. There is no doubt that sentence meted out was deserving and confirmed by this court. In respect thereto, there are binding decisions of the Court of Appeal which interpreted what life imprisonment is. It is in respect of the life sentence as commuted that this court has to deal with. It is sad that the office of the director of public prosecution has not had a chance to present the status of the convicts.
6. The issue in this case is whether the mandatory death sentence should be substituted with a determinate sentence. The Applicant had had his sentence commuted to a life sentence.
7. The revisionary powers of this court are set out under the law for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed under Section 362 of the [Criminal Procedure Code](#), which provides as follows:

The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.



8. This court has powers to certify its decision as provided under Section 367 of the [Criminal Procedure Code](#). On the other hand, it provides as hereunder:

When a case is revised by the High Court it shall certify its decision or order to the court by which the sentence or order so revised was recorded or passed, and the court to which the decision or order is so certified shall thereupon make such orders as are conformable to the decision so certified, and, if necessary, the record shall be amended in accordance therewith.

9. The powers have since been extended to orders of this court in so far as re-sentencing or equating of sentence is concerned. This has been as a result of the interpretations by courts above this court and whose effect is to provide an avenue for review of sentences deemed to be unconstitutional. So far, review has been on section 333(2); death penalty, mandatory death penalty and life sentence. This flows from the decision of [Muruatetu & another v Republic; Katiba Institute & 5 others \(Amicus Curiae\)](#) (Petition 15 & 16 of 2015 (Consolidated)) [2017] KESC 2 (KLR) (14 December 2017) (Judgment), [Manyeso v Republic](#) (Criminal Appeal 12 of 2021) [2023] KECA 827 (KLR) (7 July 2023) (Judgment) among other.
10. The Applicant was just one of the 3 persons who were charged with the offence of robbery with violence in the trial court. The particulars of the offence were that on the night of 5th and 6th day of September 2007, at Itini Village in Nyeri District within Central Province, jointly with others not before court while armed with a dangerous weapon namely pangas and knives, robbed Mary Muthoni Gichuki of one Mobile Phone make Motorola C113 valued at Kshs 2,400/- and cash Kshs 7,000 and immediately before or after the robbery fatally wounded the said Mary Muthoni Guchuki.
11. The trial court considered the case and having convicted the Applicant also sentenced him to death, a sentence that is well deserved for the offence. The nature of violence was not useful for the art of robbery. The items stolen were so meagre and as such the Appellant had reckless disregard for human life.
12. Aggrieved, the Applicant filed an appeal to this court which was dismissed on the ground that both conviction and sentence were proper. The matter rested there until the Court of Appeal found it useful to declare life sentence unconstitutional. The decision is binding to this court, and as such the court cannot allow unconstitutional sentences to stand.
13. The object of revisionary powers of the High Court is to confer upon the High Court a kind of paternal or supervisory jurisdiction in order to correct or prevent a miscarriage of justice or to right what appears to be an unconstitutional sentence. The High Court of Malaysia in *Public Prosecutor v Muhari bin Mohd Jani and another* [1996] 4 LRC 728 at 734, 735 stated as doth:

“The powers of the High Court in revision are amply provided under section 325 of the Criminal Procedure Code subject only to subsections (ii) and (iii) thereof. The object of revisionary powers of the High Court is to confer upon the High Court a kind of “paternal or supervisory jurisdiction” in order to correct or prevent a miscarriage of justice. In a revision the main question to be considered is whether substantial justice has been done or will be done and whether any order made by the lower court should be interfered with in the interest of justice...If we have been entrusted with the responsibility of a wide discretion, we should be the last to attempt to fetter that discretion...This discretion, like all other judicial discretions ought, as far as practicable, to be left untrammelled and free, so as to be fairly exercised according to the exigencies of each case”



14. The Supreme Court stated in an advisory which applies only to murder cases, stated the following in *Muruatetu & another v Republic; Katiba Institute & 5 others (Amicus Curiae)* (Petition 15 & 16 of 2015 (Consolidated)) [2017] KESC 2 (KLR) (14 December 2017) (Judgment), as regards a fair trial:
12. A fair trial had many facets, and included mitigation and the right to appeal or apply for review by a higher court as prescribed by law. Section 204 violated article 50 (2) (q) of the *Constitution* as convicts under it were denied the right to have their sentence reviewed by a higher court – their appeal was in essence limited to conviction only. There was no opportunity for a reviewing higher court to consider whether the death sentence was an appropriate punishment in the circumstances of the particular offense or offender. The right to justice was also fettered.
13. The scope of access to justice as enshrined in article 48 was very wide. Courts were enjoined to administer justice in accordance with the principles laid down under article 159 of the *Constitution*. Thus, with regards to access to justice and fair hearing, the State through the courts, ensured that all persons were able to ventilate their disputes. Access to justice included the right to a fair trial. If a trial was unfair, one could not be said to have accessed justice. In that respect, when a murder convict's sentence could not be reviewed by a higher court he was denied access to justice which could not be justified in light of article 48 of the *Constitution*.
15. It is therefore imperative that mitigation factors be taken into consideration in equating a sentence. Latter jurisprudence has argued that mandatory sentences deprive courts of discretion to impose appropriate sentences and are thus arbitrary and unconstitutional. The instant application is premised among others on Article 50 (2)(q) of the *Constitution*. Discretion in sentencing is a matter of justice and pertains to fair trial. Therefore, a person who suffers this deprivation may claim violation of the right to appropriate or less severe sentence - a principle embodied in the *Constitution* including Article 50(2)(p) of the *Constitution* as follows:
- Every accused person has the right to a fair trial which includes the right:
- ... to the benefit of the least severe of the prescribed punishments for an offence, if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing.
16. This does not mean that a part may re-litigate matters that have been pronounced with finality. Only those windows which the law provides will be used. It does not open any doors to regurgitate arguments that were refused in the prior trial. This process is not an appeal and as such the court cannot set aside the sentence as if it is an Appeal. Review should thus be understood as limited.
17. The Appellant had been charged under Section 296(2) of the *Penal Code*, which provides as doth:
- If the offender is armed with any dangerous or offensive weapon or instrument, or is in company with one or more other person or persons, or if, at or immediately before or immediately after the time of the robbery, he wounds, beats, strikes or uses any other personal violence to any person, he shall be sentenced to death.
18. However, in my view, re-sentencing merely provides an effective remedy to an injustice that may arise from a violation of a right or fundamental freedom. This was equally the view of this Court in *Michael Kabhwa Laichena & another v Republic* (2018) eKLR thus:
- “...by re-sentencing the petitioner, the High Court is merely enforcing and granting relief for what is in effect a violation caused by the imposition of the mandatory death sentence.”



19. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime was done. The Court of Appeal in *Thomas Mwambu Wenyi v Republic* (2017) eKLR cited the decision of the Supreme Court of India in *Alister Anthony Pereira v State of Maharesbtra* at paragraph 70-71:

“Sentencing is an important task in the matter of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straight jacket formula for sentencing an accused person on proof of crime. The courts have evolved certain principles: twin objective of sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstance of each case and the courts must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances. The principle of proportionality in sentencing a crime doer is well entrenched in criminal jurisprudence. As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crime doer. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence.

20. The death sentence was imposed since it was the mandatory sentence provided. Under the law under Section 296(2) of the *Penal Code*, the sentence for robbery with violence is death. In Kenya, death sentences are usually commutated to life imprisonment by administrative fiat. However, the sentence is a mandatory one. Today however, the question is not the mandatory nature of the death penalty as the Power of Mercy Advisory Committee took it off the table.
21. The Applicant herein, having been sentenced to serve death on his conviction of the offence of murder cannot be said to be without a remedy. This emerging jurisprudence is a product of a purposive reading of Articles 27 and 28 of the *Constitution* as applied to sentencing. In interpreting these provisions, the Court of Appeal, in the Malindi Criminal Appeal No 12 of 2021, *Julius Kitsao Manyeso v Republic* (Judgement 7/7/2023) (unreported) stated as follows:

...we are of the view that the reasoning in *Francis Karioko Muruatetu & another v Republic* [2017] eKLR equally applies to the imposition of a mandatory indeterminate life sentence, namely that such a sentence denies a convict facing life imprisonment the opportunity to be heard in mitigation when those facing lesser sentences are allowed to be heard in mitigation. This is an unjustifiable discrimination, unfair and repugnant to the principle of equality before the law under article 27 of the *Constitution*. In addition, an indeterminate life sentence is in our view also inhumane treatment and violates the right to dignity under article 28, and we are in this respect persuaded by the reasoning of the European Court of Human Rights in *Vinter & others v The United Kingdom* (Application nos. 66069/09, 130/10 and 3896/10) 120161 Ill ECHR 317 (9 July 2013) that an indeterminate life sentence without any prospect of release or a possibility of review is degrading and inhuman punishment, and that it is now a principle in international law that all prisoners, including those serving life sentences, be offered the possibility of rehabilitation and the prospect of release if that rehabilitation is achieved.”

22. The Applicant herein was convicted by the trial court on 1/7/2009 following which he preferred an appeal to this court which was determined on 26/9/2014, 10 years ago. He now attempts to review



the sentence vide this application. The Applicant has not previously applied for a resentencing. The Applicant only preferred an appeal against the finding of this court on both conviction and Sentence in Nyeri Court of Appeal Criminal Appeal No 112 of 2014 but the same was withdrawn pursuant to Rule 68 of the Court of Appeal Rules, 2010 on 16/9/2020.

23. In *Vinter and others v the United Kingdom* (Applications nos. 66069/09, 130/10 and 3896/10) the court held that:

“It is axiomatic that a prisoner cannot be detained unless there are legitimate penological grounds for that detention. As was recognized by the Court of Appeal in Bieber and the Chamber in its judgment in the present case, these grounds will include punishment, deterrence, public protection and rehabilitation. Many of these grounds will be present at the time when a life sentence is imposed. However, the balance between these justifications for detention is not necessarily static and may shift in the course of the sentence. What may be the primary justification for detention at the start of the sentence may not be so after a lengthy period into the service of the sentence. It is only by carrying out a review of the justification for continued detention at an appropriate point in the sentence that these factors or shifts can be properly evaluated.

Moreover, if such a prisoner is incarcerated without any prospect of release and without the possibility of having his life sentence reviewed, there is the risk that he can never atone for his offence: whatever the prisoner does in prison, however exceptional his progress towards rehabilitation, his punishment remains fixed and unreviewable. If anything, the punishment becomes greater with time: the longer the prisoner lives, the longer his sentence. Thus, even when a whole life sentence is condign punishment at the time of its imposition, with the passage of time it becomes – to paraphrase Lord Justice Laws in *Wellington* – a poor guarantee of just and proportionate punishment.

24. Infliction of punishment is pre-eminently a matter for the discretion of the trial court as stated eloquently in the case of *State v Tom, State v Bruce* (1990) SA 802 (A), Smalberger, JA, where the majority of Supreme Court of South Africa, made the following pertinent observations about sentencing in general and mandatory sentences in particular:

“The first principle is that the infliction of punishment is pre-eminently a matter for the discretion of the trial court ... That courts should, as far as possible, have an unfettered discretion in relation to sentence is a cherished principle which calls for constant recognition. Such discretion permits of balanced and fair sentencing, which is a hallmark of enlightened criminal justice. The second, and somewhat related principle, is that of the individualization of punishment, which requires proper consideration of the individual circumstances of each accused person. This principle too is firmly entrenched in our law... A mandatory sentence runs counter to these principles. (I use the term “mandatory sentence” in the sense of a sentence prescribed by the legislature which leaves the court with no discretion at all -either in respect of the kind of sentence to be imposed or, in the case of imprisonment, the period thereof.) It reduces the court’s normal sentencing function to the level of a rubber stamp. It negates the ideal of individualization. The morally just and the morally reprehensible are treated alike. Extenuating and aggravating factors both count for nothing. No consideration, no matter how valid or compelling, can affect the question of sentence... Harsh and inequitable results inevitably flow from such a situation.



Consequently, judicial policy is opposed to mandatory sentences...as they are detrimental to the proper administration of justice and the image and standing of the courts.”

25. The Supreme Court also cited where the Supreme Court of India considered the constitutionality of a provision of law prescribing a mandatory sentence of death that was challenged in the case of *Mithu Singh v State of Punjab*, 1983 AIR 473. The court posited as follows: -

“...a provision of law which deprives the court of the use of its wise and beneficent discretion in a matter of life and death, without regard to the circumstances in which the offence was committed and, therefore, without regard to the gravity of the offence, cannot but be regarded as harsh, unjust and unfair. It has to be remembered that the measure of punishment for an offence is not afforded by the label which that offence bears, as for example ‘Theft, Breach of Trust’ or ‘Murder’. The gravity of the offence furnishes the guideline for punishment and one cannot determine how grave the offence is without having regard to the circumstances in which it was committed, its motivation and its repercussions. The legislature cannot make relevant circumstances irrelevant, deprive the courts of their legitimate jurisdiction to exercise their discretion not to impose the death sentence in appropriate cases, compel them to shut their eyes to mitigating circumstances and inflict upon them the dubious and unconscionable duty of imposing a preordained sentence of death. Equity and good conscience are the hall-marks of justice. The mandatory sentence of death prescribed by section 303, with no discretion left to the court to have regard to the circumstances which led to the commission of the crime, is a relic of ancient history. In the times in which we live, that is the lawless law of military regimes. We, the people of India, are pledged to a different set of values. For us, law ceases to have respect and relevance when it compels the dispensers of justice to deliver blind verdicts by decreeing that no matter what the circumstances of the crime, the criminal shall be hanged by the neck until he is dead.”

26. It must be recalled that it is the duty of the courts to ensure that the sentences so prescribed are imposed in matters before them as was stated in the decision of the Constitutional Court of Uganda in *Susan Kigula & 417 others v Attorney General*, Const. App. No 3 of 2006 that:

“The legislature has all the powers to make laws including prescribing sentences. But it is the duty of the courts to ensure that the sentences so prescribed are imposed in accordance with the *Constitution*.”

27. This applies in cases where the sentences hitherto meted out were provided for, but the courts subsequently changed the interpretation of the law. I have no doubt that the purpose and objectives of sentencing as stated in the Judiciary Sentencing Policy should be commensurate and proportionate to the crime committed and the manner in which it was committed. The sentencing should be one that meets the end of justice and ensures that the principles of proportionality, deterrence and rehabilitation are adhered to.

28. The Supreme Court of Appeal of South Africa in *S v Nkosi & others* 2003 (1) SACR 91 (SCA) considered the constitutionality of the sentence where trial court had sentenced the appellants to terms of imprisonment of 120 years, 65 years, 65 years and 45 years respectively. The Court stated at para 9 as follows:

Thus, under the law as it presently stands, when what one may call a Methuselah sentence is imposed (i.e. a sentence in respect of which the prisoner would require something approximating to the longevity of Methuselah if it is to be served in full) the prisoner



will have no chance of being released on the expiry of the sentence and also no chance of being released on parole after serving one half of the sentence. Such a sentence will amount to cruel, inhuman and degrading punishment which is proscribed by s 12(1)(e) of the Constitution of the Republic of South Africa Act 108 of 1996. The courts are discouraged from imposing excessively long sentences of imprisonment in order to avoid having a prisoner being released on parole. A prisoner serving a sentence of life imprisonment will be considered for parole after serving at least 20 years of the sentence, or at least 15 years thereof if over 65 years, according to the current policy of the Department of Correctional Services. A sentence exceeding the probable life span of a prisoner means that he [or she] will have no chance of being released on the expiry of the sentence and also no chance of being released on parole after serving one half of the sentence. Such a sentence will amount to cruel, inhuman and degrading punishment.

29. Back home, the Court of Appeal in *Ayako v Republic* (Criminal Appeal 22 of 2018) [2023] KECA 1563 (KLR) (8 December 2023) (Judgment) stated as follows:

On our part, considering this comparative jurisprudence and the prevailing socio-economic conditions in Kenya, we come to the considered conclusion that life imprisonment in Kenya does not mean the natural life of the convict. Instead, we now hold, life imprisonment translates to thirty years' imprisonment.

30. Therefore, as attributed by Professor Ronald Dworkin in his deductions on the principle of self determination and the principle of equality in his seminal theory: *A Theory of Justice*: "Punishment, like marriage, is an inherently imprecise criterial concept. Criterial concepts are imprecise when, in light of their very nature, it is impossible for us to agree on the necessary and sufficient conditions that set forth the criteria for the correct application and use of the term or phrase."
31. Based on the above disposition, I find legal basis on which to exercise my discretion in favour of the Applicant as stated in the Indian case of *Ramakant Rai v Madan Rai*, Cr LJ 2004 SC 36. The Supreme Court of India rendered itself thus on the issue of judicial discretion:

"Judicial discretion is canalized authority not arbitrary eccentricity. Cardozo, with elegant accuracy, has observed:

"The judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to 'the primordial necessity of order in the social life.' Wide enough in all conscience is the field of discretion that remains".

32. The Applicant was convicted by the trial court on 1/7/2009 and has been in prison since then, now 15 years. He had been arrested on 14/9/2007 and therefore has been in custody for 17 years. The duration he has served in custody is a factor to be considered in resentencing. No doubt, his sentence for death shall be substituted with a determinate sentence. In doing so, this Court is not however, obscured from the crime committed by the Applicant.
33. It was an aggravated robbery with violence in which the victim suffered among others, her life. Particularly so, she was buried in cover-up after the commitment of the crime. She was buried twice.



First, unlawfully by the Applicant with his accomplices in attempt to conceal her whereabouts and ultimately, lawfully by her family.

34. The guidance given by the Court of Appeal in *Evans Nyamari Ayako v Republic* Kisumu CACRA No 22 of 2018 (Okwengu, Omondi & J. Ngugi, JJA) (unreported) translated life imprisonment to 30 years. The same court differently constituted in the case of *Barasa v Republic* (Criminal Appeal 219 of 2019) [2024] KECA 324 (KLR) (15 March 2024) (Judgment), stated as follows:

“Given the circumstances in which the offence was committed, the complainant being a young girl whom the appellant as the stepfather ought to have protected but instead violated, the appellant deserved a deterrent sentence. The sentence of life imprisonment was an option which was available in the exercise of discretion in sentencing and would in our view have been appropriate.

13. In accordance with our decision in *Evans Nyamari Ayako v Republic* (supra), translating life imprisonment to a term sentence of 30 years’ imprisonment, we allow the appellant’s appeal; on sentence to the extent of substituting the sentence of life imprisonment that was imposed on the appellant with a term sentence of 30 years’ imprisonment. The sentence of 30 years shall be calculated from the date the appellant was first arraigned in court in accordance with Section 333(2) of the *Criminal Procedure Code*.

35. The Court of Appeal did not tire from this position as is in the case of *Manyeso v Republic* (Criminal Appeal 12 of 2021) [Supra] while sitting in Malindi held that life imprisonment is unconstitutional and substituted the same with 40 years. They stated as follows: -

“We recognize that although the Judiciary released elaborate and comprehensive Sentencing Policy Guidelines in 2016, there are no specific provisions for the sentence of life imprisonment, because it is an indeterminate sentence. Nevertheless, we are in agreement with the High Court decision in *Jackson Wangui*, supra, which found that it is not for the court to define what constitutes a life sentence or what number of years must first be served by a prisoner on life sentence before they are considered on parole. This is a function within the realm of the Legislature...

... We are therefore of the view that while the appellant should be given the opportunity for rehabilitation, he also merits a deterrent sentence. We, therefore in the circumstances, uphold the appellant’s conviction of defilement, but partially allow his appeal on sentence. We accordingly set aside the sentence of life imprisonment imposed on the appellant and substitute therefor a sentence of 40 years in prison to run from the date of his conviction.”

36. It is therefore my understanding that in each case we shall translate what life imprisonment means to the particular Applicant. In this case a sentence of 35 years translates to life imprisonment for the Applicant. He was quite ruthless in his robbery where a person died and he tried to conceal by burying the deceased secretly. Remorse is not one of the Applicant’s strong points as none is seen now and none was seen then.
37. It is my position that had the commutation not been done, the death penalty would still be ideal for the Applicant. However, having received mercy by a constitutionally mandated body, it is our duty to interpret what that life imprisonment means for this Applicant.
38. The application is allowed partly, not because of the inherent merits but by supervening events that had not obtained at the time of sentencing, that is, commutation of death sentence to life imprisonment



by the President of the Republic of Kenya, upon the recommendation of the Advisory Committee on the Power of Mercy.

39. I therefore substitute the life sentence, with its equivalent, that is, 35 years. The period shall run, as per Section 333(2) of the *Criminal Procedure Code*, from date of arrest on 14/9/2007.
40. In the circumstances the appellant's conduct is heinous and deserves rightfully a death penalty which has been commuted to life sentence. The Court of Appeal has directed that the sentences be translated. The appellant's life sentence is equated to 35 years starting from 14/9/2007, the date of arrest.

Orders

41. In the circumstances, I make the following orders: -
- a. The application does not have inherent merit. However, it is partly allowed.
 - b. The death penalty imposed by this court was a proper sentence. However, vide Gazette Notice No 9566, published in Vol. CXXV—No 168 NAIROBI on 21st July, 2023, President of the Republic of Kenya, upon the recommendation of the Advisory Committee on the Power of Mercy commuted the death sentence to life imprisonment on 21/7/2023. The said commuted sentence is therefore equated to 35 years imprisonment from 14/9/2007, the date of arrest.
 - c. The file is closed.

**DELIVERED, DATED AND SIGNED AT NYERI ON THIS 16TH DAY OF OCTOBER, 2024.
RULING DELIVERED PHYSICALLY IN OPEN COURT.**

KIZITO MAGARE

JUDGE

In the presence of:-

Mr. Mwakio for the State

Applicant present

Court Assistant – Jedidah

