



**Shikuvali v Republic (Criminal Petition 21 of 2020)  
[2023] KEHC 20365 (KLR) (21 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20365 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CRIMINAL PETITION 21 OF 2020  
WM MUSYOKA, J  
JULY 21, 2023**

**BETWEEN**

**ERICK SHIKUVALI ..... PETITIONER**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The petition, dated July 28, 2020, seeks re-sentencing. The petitioner had been convicted in Kakamega CMCCRC No 1339 of 2012, on 1 count of robbery with violence, and was given the mandatory death sentence, on May 23, 2013. His appeal, in Kakamega HCCRA No 100 of 2013, was not successful.
2. The application, no doubt, rides on the decision in *Francis Karioko Muruatetu & another vs Republic [2017] eKLR* (Maraga CJ&P, Mwilu DCJ&VP, Ojwang, Wanjala, Njoki & Lenaola, SCJJ), where the court appeared to lay down a general principle that all mandatory sentences are unconstitutional, and to allow trial and appellate courts discretion to re-visit cases where mandatory sentences had been imposed, with a view to revising or reviewing them. The Supreme Court has since re-visited the issue in *Francis Karioko Muruatetu & another vs Republic; Katiba Institute & 5 others (Amicus Curiae) [2021] eKLR* (Koome CJ&P, Mwilu DCJ&VP, Ibrahim, Wanjala, Njoki, Lenaola & Ouko, SCJJ), and clarified that its decision in Francis Karioko Muruatetu & another vs Republic [2017] eKLR (Maraga CJ&P, Mwilu DCJ&VP, Ojwang, Wanjala, Njoki & Lenaola, SCJJ) was of application only in murder cases, and not any other.
3. The current jurisprudence points to entertainment and tolerance of applications for review of sentence, where the trial court imposed a mandatory sentence, in circumstances where the law did not allow any discretion. The trend is, no doubt, in line with the very progressive provisions of the *Constitution* of Kenya of 2010. The offence, that the petitioner was convicted in respect of, attracts a mandatory sentence.



4. As the death sentence has been pronounced unconstitutional, at all levels of superior courts, it then stands that the sentence imposed on the petitioner herein is no longer tenable. I hereby set it aside.
5. Subsequent to setting aside that sentence, I have to consider the alternative sentence that I should impose. The offence of robbery with violence is a felony, so grave that the Republic assigned to it the ultimate penalty, death. The consequences of violent robbery are grave. It can lead to deaths or maiming of victims. It strikes terror in the hearts of communities, and the Republic has a responsibility to ensure that all are safe and secure within the borders. For anyone convicted of robbery with violence, imprisonment ought to be the alternative to death.
6. I note, from the trial record, that the petitioner was in a group of 7, who attacked the complainant, they used violence on him, by cutting him on both hands, head and legs, until he lost consciousness. He was admitted in hospital for 2 months, and continued attending clinics there for another 1 month. Simple robbery attracts a maximum sentence of 14 years, according to section 296(1) of the *Penal Code*, Cap 63, Laws of Kenya. The sentence to be imposed for robbery with violence should logically be more than 14 years. Consequently, I shall, and do hereby, impose an imprisonment sentence on the petitioner of 40 years. The time spent in custody to be reckoned. Plea was taken on July 4, 2012, conviction and sentence was on May 23, 2013. Orders accordingly.

**RULING DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA ON THIS 21ST DAY OF JULY 2023**

**WM MUSYOKA**

**JUDGE**

**Mr. Erick Zalo, Court Assistant.**

**Appearances**

**Eric Shikuvali, the petitioner, in person.**

**Ms. Kagai, instructed by the Director of Public Prosecutions, for the respondent.**

