



**Ewoi v Republic (Miscellaneous Criminal Application E009 of 2020)  
[2023] KEHC 21424 (KLR) (1 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 21424 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAHURURU  
MISCELLANEOUS CRIMINAL APPLICATION E009 OF 2020**

**CM KARIUKI, J**

**AUGUST 1, 2023**

**BETWEEN**

**JAMES ELI EWOI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Accused/Applicant/Petitioner was charged with Robbery with Violence contrary to section 296(2) in which he was found guilty, convicted, and sentenced to suffer death in 2002 in Criminal Case 916 of 1999 after three (3) in custody.
2. He says he has been in Prison for twenty-four (24) years now. He was 37 years then, and now he is 61 years.
3. He lodged an appeal in High Court at Nakuru No 6803 of 2003, which could not proceed as records of trial court files were burnt down in the Law Court at Nyahururu between 2003 and 2004. It is not lost that the court has held, in the case of *Pius Mukabe Mulewa & Another v Republic* Criminal Appeal No 103 of 2001 and followed in *John Karanja Wainaina v Republic* - Criminal Appeal No 61 of 1993 (unreported) and *Joseph Maina Kariuki v Republic* Criminal App No 53 and 105 of 2004:

“An acquittal should not follow as a matter of course where a file has disappeared. After all, a person like the appellant has lost the benefit of the presumption of innocence given to him by section 72 (2) (a) of the *Constitution*, having been convicted by a competent court. On appeal, the burden is on him to show that the court which convicted him did so in error.” (Emphasis added)

4. Thus, he has opted to seek re-sentence as the President committed his death sentence to a life sentence. The Kenya Court of Appeal declared mandatory life imprisonment unconstitutional while hearing a



rape case committed on a four-year-old girl in 2013. Partially allowing the appeal, it modified the life imprisonment sentence to imprisonment of 40 years for the convict. See the case of Criminal Appeal No 12 of 2021 Between *Julius Kitsao Manyeso vs Republic*, the Court of Appeal at Malindi.

5. The applicant seeks Court to hold that the 24 years he has been in custody be enough punishment and, thus, be set at Liberty.
6. The Office of Direction of Public Prosecutions (ODPP) has conceded to the proposal and the application given the 21 years served plus the period he was in custody during the trial.
7. Thus, the court finds that it is only fair that the death sentence meted out to him, which was subsequently commuted life sentence- is set aside and reduced to the period he has been in custody since 1999 (24 years)
  - i. Thus, to be released forthwith as the period he has served is enough, considering his circumstances, health, and age.

**DATED, SIGNED, AND DELIVERED AT NYAHURURU THIS 1ST DAY OF AUGUST 2023.**

.....

**CHARLES KARIUKI**

**JUDGE**

