



**Wainaina v Republic (Petition 10 of 2022)
[2024] KEHC 12629 (KLR) (18 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 12629 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
PETITION 10 OF 2022
A MSHILA, J
OCTOBER 18, 2024**

BETWEEN

SAMUEL NJOGU WAINAINA PETITIONER

AND

REPUBLIC RESPONDENT

JUDGMENT

1. This is an application for sentence review through a constitutional petition in which the Petitioner seeks this court to find that the time he spent in custody be sufficient and give him another chance in life. The Chamber Summons application is undated but was filed on 10th April, 2021 at Voi High Court. On 29th November, 2021 Justice Mativo directed that the matter be transferred to this court to avoid unnecessary delay in obtaining the lower court's file. This is because the Petitioner was tried at Thika Magistrates Court, Criminal Case No.7482 of 2003 and this court is the nearest court to the trial court.
2. The Petitioner was charged with the offence of Robbery with Violence contrary to Section 296(2) of the Penal Code. He was convicted and sentenced to death. Dissatisfied with both the conviction and the sentence, the Petitioner appealed in the High Court vide Criminal Appeal No. 429 of 2005 at Nairobi. The appeal was dismissed on 16th October, 2008. In 2009, His Excellency the President commuted the Petitioner's death sentence to life sentence.
3. The Petitioner filed written submissions stating that life sentence does not respect or protect inherent dignity of a person contrary to Article 28 of the Constitution. Life sentence inflicts psychological torture contrary to Article 29(d) of the Constitution. He relied on Thomas Mwambu Wenyi v Republic (2017)eKLR.



Issues for Determination

4. The sole issue for determination is whether the court should review the meted out on the Petitioner.

Analysis

5. The applicable law is found under Article 165(3) of the Constitution which gives this Court the jurisdiction to determine cases where the rights and fundamental freedoms of citizens under the Bill of Rights have been violated. This jurisdiction in respect of resentencing is demonstrated in prevailing jurisprudence. In the Court of Appeal decision in the case of Julius Kitsao Manyeso v Republic (Criminal Appeal 12 of 2021) [2023] KECA 827 (KLR) (7 July 2023) it was held:-

“...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”.

6. This Petition is therefore rightly before this court. The appropriate sentence depends on the facts and the circumstances of the case. The Supreme Court set out guidelines and mitigating factors in resentencing in Francis Karioko Muruatetu & Another –vs- Republic. Further the Judiciary Sentencing Policy Guidelines lists the relevant factors in sentencing at page 15 paragraph 4.1 including the gravity of the offence, the threat of violence against the victim, the nature and type of weapon used by the Applicant to inflict harm.
7. Life imprisonment should not mean natural life of a convict. Such an indefinite sentence contravenes the right to human dignity and the right not to be subjected to inhuman and degrading treatment. In Ngugi v Republic (Miscellaneous Criminal Application E025 of 2021) [2024] KEHC 1842 (KLR) (26 February 2024) (Judgment) it was observed that the jurisprudence emanating from the Court of Appeal is that the court may fix a definite period of imprisonment where a person has been imprisoned for life or the law prescribes life sentence.
8. In the instant case, the Petitioner and his accomplices accosted the complainant on his way home from work. They grabbed him, pointed a gun at him and demanded money with menaces. They dragged him to a bush, took his money and ordered him to lie down before they vanished.
9. The circumstances of this case and the mitigation rendered by the petitioner have been considered. The Petitioner submitted that he was remorseful and has undergone rehabilitation. He has learnt to live as a peace-loving citizen with necessary skills to earn him a living. He was a first offender at the time of committing the offence. The record indicates that he was sentenced to death because that is what is provided by the law. The petition has merit and may be allowed.

Findings and Determination

10. In light of the above reasoning this court makes the following findings and determinations;
 - i. This court finds the Petition has merit and it is hereby allowed
 - ii. The sentence of life imprisonment be and is hereby set aside and substituted with a sentence of 30 years imprisonment, to run from the date of conviction.

Orders Accordingly.



DATED SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 18TH DAY OF OCTOBER, 2024.

A. MSHILA

JUDGE

In the presence of;

Mourice – Court Assistant

Gacharia - for the State

Petitioner – present in person from Mayani Maximum Prison

Language - Kiswahili

