



REPUBLIC OF KENYA



**Ndiwa v Republic (Petition E103 of 2024)  
[2024] KEHC 17065 (KLR) (6 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 17065 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
PETITION E103 OF 2024  
E OMINDE, J  
NOVEMBER 6, 2024**

**BETWEEN**

**MORRIS KIRUI NDIWA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant Morris Kirui Ndiwa was charged jointly with Margaret Adema with the offense of Robbery with Violence Contrary to Section 295 as read with Section 296(2) of the [Penal Code](#).
2. The particulars of the charge were that on the 27<sup>th</sup> Day of August 2013 at Kimumu Estate within Uasin Gishu County, the accused persons jointly with others not before the Court and while armed with dangerous weapons namely pangas runigus and iron bars robbed Maureen Stella Olunga of two mobile phones make Nokia C2 and Huawei Ascend, 6kg K-gas cylinder, a pair of spectacles, cash Ks. 4000/-, two bunches of keys and personal documents all valued at Ks. 54,899/-, the property of the said Maureen Stella Olunga and immediately before the time of such robbery used actual violence on the said Maureen Stella Olunga.
3. In the alternative, the Applicant was charged with the offence of Handling Stolen Property contrary to Section 322(1) & (2) of the [Penal Code](#).
4. The Applicant pleaded not guilty to the charge and after a full trial he was convicted on the charge of Robbery with Violence and sentenced to death.
5. Aggrieved by the judgment of the Lower Court, the Applicant preferred an appeal to the High Court being Eldoret High Court Criminal Appeal No. 36 of 2016 wherein the High Court dismissed the appeal against the conviction but allowed the appeal against the sentence.



6. The Court in finding that the death sentence was too excessive in the circumstances of the case set aside the sentence of death and substituting it with a sentence of 15 years imprisonment.
7. The Applicant has now approached this Court by way of an undated Notice of Motion dated seeking re-sentencing under the provisions of Section 333(2) of the *Criminal Procedure Code*. The Applicant seeks to have the 15 years sentence by the High Court reduced to factor in the time spent in remand custody.
8. In a nutshell, the Applicant submitted that he was in custody during the trial before the lower court from 12<sup>th</sup> September 2013 to 23<sup>rd</sup> February 2016 totalling 2 years and 7 months which he prays that the court takes into account under the provisions of Section 333(2) of the *Criminal Procedure Code*
9. The Prosecution did not oppose the Application
10. The sole issue for determination in this case is

“Whether the Applicant is entitled to review of sentence under the proviso to Section 333(2) of the *Criminal Procedure Code*”.

#### **DETERMINATION.**

11. I have had occasion to look at the judgement of the Court the subject matter of this application. The said judgement was prepared by the Justice E. N. Maina and is dated 15<sup>th</sup> January 2020. It was delivered by Justice H.A. Omondi on 22<sup>nd</sup> January 2020.
12. I note that in the said judgement, the Hon Justice Maina upon concluding the same stated as follows;

“In arriving at the sentence of 15 years, I have taken into account the period spent in custody”
13. Given the above, it is clear that the High Court already took into account the provisions of Section 333(2) of the *Criminal Procedure Code* in setting aside the death sentence and substituting it with the 15 years that the Applicant now prays be reduced further.

For this reason, I find that his Application is misconceived and lacks merit because that which he seeks has already been done and so his application is dismissed.
14. Right of Appeal 14 days.

**READ, DATED AND SIGNED AT ITEN ON 6<sup>TH</sup> NOVEMBER 2024**

**E. OMINDE**

**JUDGE**

