



**Kareithi v Republic (Miscellaneous Criminal Application E025 of 2024)
[2024] KEHC 16097 (KLR) (17 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16097 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MISCELLANEOUS CRIMINAL APPLICATION E025 OF 2024**

**JM NANG'EA, J
DECEMBER 17, 2024**

BETWEEN

DENNIS MURIITHI KAREITHI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was tried alongside 3 others and convicted of Robbery with violence contrary to section 296(2) of the *Penal Code* before the Magistrate's Court at Narok in Criminal Case File No 786 of 2002. They were all sentenced to suffer death. The applicant and three of his fellow convicts lodged an appeal with this court through Consolidated Appeals Nos. 498, 499, 500 and 501, all of 2002 which appeals were dismissed. Although he does not mention, the applicant and the other convicts preferred a second appeal to the Court of Appeal at Nakuru which was also dismissed on 14th November 2006. The applicant and three fellow inmates thereafter filed Consolidated Miscellaneous Criminal Applications Nos E024, E026 and E027, all of 2021 in the High Court at Narok seeking re-sentence rehearing, complaining that the death sentences imposed against them are unconstitutional. After hearing the applications my brother (E. Gikonyo M. Judge) set aside the death sentences and substituted the same with life imprisonment for each of the offenders.
2. This applicant is once again praying for re-sentencing and requests for a chance to offer mitigation submissions. He contends that the death sentence is degrading and therefore unconstitutional. Reference is made to various decided cases including Machakos High Court case, *Philp Mueke Mainji & others v Republic*, and *William Okungu Kittiny v Republic* (2018) eKLR in which this court declared mandatory minimum sentences like death to be unconstitutional.
3. Indeed the Court of Appeal in *Manyeso v Republic* being Malindi Criminal Appeal No 12 of 2024 and *Ayako v Republic* (Kisumu Criminal Appeal No 22 of 2018) declared life imprisonment as unconstitutional for its indeterminate nature and thus degrading and inhuman effect. The



Constitutional and Human Rights Court's decision in consolidated Petitions Nos. 5 and 6 of 2022 (*Ramadhan & 8 others v Attorney-General and another* 2024 KEHC 1173 (KLR) (6 February 2024) (Judgement) also reached the same conclusion that mandatory sentences are unconstitutional for fettering the court's discretion to determine an appropriate sentence based on the peculiar facts and circumstances of each case.

4. The prosecution Counsel neither filed a reply nor made submissions.
5. The issue arising for determination is whether this court has jurisdiction in law to revisit decisions of superior courts or those of concurrent jurisdiction. The case of *Daniel Otieno Oracha v Republic* (2019) eKLR embodies the important principle of stare decisis which prohibits relitigation of a matter that has been before another court of similar or higher jurisdiction. By dint of this principle, this court is bereft of jurisdiction to resentence the applicant as desired or at all.
6. Moreover, the Supreme Court in the famous *Muruatetu 2* decision clarified that its earlier judgement in the *Muruatetu 1* Case declaring the mandatory nature of the death sentence for the offence of murder as unconstitutional only applied to murder cases. The apex court's more recent decision in Constitutional Petition No 018 of 2023 (*Republic v Joshua Gichuki Mwangi & others*) reiterates the position and exhorts litigants wishing to challenge laws prescribing mandatory and/or minimum sentences for offences other than murder to mount the challenge from the High Court, and if necessary escalate the dispute to the Court of Appeal and on to the Supreme Court, for a final decision to be made.
7. The applicant was charged with and convicted of the capital offence of robbery with violence contrary to section 296 (2) of the *Penal Code*. The Supreme Court's decision in the *Muruatetu 1* case does not therefore apply for the reasons given.
8. Before I pen off, it is noted that sometimes the applicant seems to argue this application as a constitutional petition challenging the death sentence in violent robbery cases. If this was the intention, a substantive constitutional petition ought to have been instituted. As it is, this is a Miscellaneous Criminal Application seeking review of the sentence meted out against the applicant.
9. The upshot is that the application is dismissed.

J. M. NANG'EA, JUDGE.

RULING DELIVERED THIS 17TH DAY OF DECEMBER 2024 IN THE PRESENCE OF:

The state, Ms Sang

The Applicant, present (online)

The Court Assistant, Lepikas

J. M. NANG'EA, JUDGE.

