



**Okuro v Republic (Miscellaneous Criminal Application E098 of 2024)  
[2024] KEHC 15289 (KLR) (5 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15289 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
MISCELLANEOUS CRIMINAL APPLICATION E098 OF 2024**

**JM NANG'EA, J  
DECEMBER 5, 2024**

**BETWEEN**

**PAUL JAKADERO OKURO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant was convicted of robbery with violence contrary to section 296(2) of the [Penal Code](#) before the Chief Magistrate's Court at Nakuru in Criminal Case File No. 996 of 2007 and sentenced to suffer death . He did appeal both the decisions to this court vide Criminal Appeal No. 131 of 2009 but the appeal was dismissed in its entirety. A second appeal to the Court of Appeal at Nakuru vide File No. 54 of 2010 was also dismissed. The President is said to have later, in exercise of his prerogative power of mercy, commuted the death sentence to life imprisonment.
2. This applicant is now challenging the death and subsequent life imprisonment sentences as unconstitutional and prays that he be placed on Probation, pleading that he has reformed. Reference is made to the Court of Appeal decisions in [Manyeso v. Republic](#) being Malindi Criminal Appeal No. 12 of 2024 and [Ayako v. Republic](#) (Kisumu Criminal Appeal No. 22 of 2018 ) in which life imprisonment was declared as unconstitutional for its indeterminate nature and thus degrading and inhuman effect, hence this application. The applicant also relies on 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). This decision decries the mandatory nature of the death sentence for fettering the discretionary power of judges and magistrates to impose sentences according to the particular facts and circumstances of each case.
3. The prosecution Counsel neither filed a reply nor made submissions.



4. The issue arising for determination is whether this court has jurisdiction in law to revisit the decision of a court of concurrent jurisdiction (M.J Anyara Emukule J Rtd ) or that of the Court of Appeal regarding the applicant's sentence. 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.
5. Besides, the Supreme Court in the famous *Muruatetu 2* decision clarified that its earlier judgement in *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 the Supreme Court, for a final decision to be made.
6. 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 reason given.
7. 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.
8. The upshot is that the application is dismissed.

**J. M. NANG'EA, JUDGE.**

**RULING DELIVERED THIS 5<sup>TH</sup> DAY OF DECEMBER 2024 IN THE PRESENCE OF:**

The state, Ms Sang

The Applicant, present

The Court Assistant, Lepikas

**J. M. NANG'EA, JUDGE.**

