



**Murithi v Republic (Criminal Miscellaneous Application E075 of 2024)  
[2025] KEHC 14327 (KLR) (30 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 14327 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT CHUKA  
CRIMINAL MISCELLANEOUS APPLICATION E075 OF 2024**

**RL KORIR, J  
SEPTEMBER 30, 2025**

**BETWEEN**

**JAMES MWANDIKI MURITHI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Application before me is dated 18<sup>th</sup> December 2024.  
The Applicant seeks three prayers as follows:-
  - i. That his life sentence be declared unconstitutional
  - ii. That he be granted a sentencing rehearing
  - iii. That his sentence be varied.
2. The Applicant has come under several Articles of *the Constitution* covering jurisdiction of this court, fundamental rights and freedoms as well as numerous provisions of the Penal Code and the Judiciary Sentencing Policy Guidelines. He places reliance on the case of Fred Michael Bwayo Criminal Appeal No. 130 of 2007.
3. The Applicant's Supporting Affidavit dated 18<sup>th</sup> December 2024 mirrors the grounds set out above and also details the different stages that his case has passed through. In brief, he was tried and convicted for the offence of grievous harm and sentenced to life imprisonment by Hon. Nyaga Ireri (Senior Resident Magistrate) on 27<sup>th</sup> October 2014. His appeals were subsequently heard and dismissed by both the High Court and the Court of Appeal.
4. The Application is opposed by the Respondent. In submissions dated 17<sup>th</sup> July 2025, the Respondent stated that this court lacked jurisdiction to determine the Application because the Applicant had



litigated all the way to the Court of Appeal and has now filed a similar Application being Miscellaneous Criminal Application No. E075 of 2024 to be determined by this court.

### **Analysis and determination**

5. Both parties in this Application have set out the background and are in agreement as follows:-
  - i. That the Applicant was charged with the offence of grievous harm contrary to Section 234 of the Penal Code and was convicted and sentenced to serve life imprisonment.
  - ii. That he appealed to the High Court and his appeal was heard and determined by Limo J. who dismissed the appeal vide Judgement dated 17<sup>th</sup> October, 2017.
  - iii. That the Applicant proceeded to the Court of Appeal. In a Judgement dated 6<sup>th</sup> September 2024, the Court of Appeal dismissed the appeal against sentence noting that “the appellant does not deserve clemency from us.”
6. The Respondent has further disclosed that the Applicant filed the present sentence revision application being Misc. Criminal Application No. E075 of 2024 following the decision of the Court of Appeal in Kisumu Criminal Appeal No. 22 of 2018 in *Evans Nyamari Ayako Vs. Republic* which stated that life imprisonment should mean an imprisonment term not exceeding 30 years.
7. The Applicant has come under numerous Constitutional provisions including Articles 22, 23, 48, 50(1) and 16 alleging that his life sentence was unconstitutional. He relies on the Court of Appeal decision in *Evans Nyamari Ayako (supra)* where the court held that an indeterminate sentence went against the right to human dignity.
8. In the cases relied on by the Applicant, the Court of Appeal held that life sentence should be given a determinate period. In the case of *Julius Kitsao Manyeso, Criminal Appeal No. 12 of 2021*, the Court of Appeal held that indeterminate life sentence amounted to inhumane treatment and violated the right to dignity under Article 28 of *the Constitution*. The court found the life sentence unconstitutional and substituted it with a determinate sentence of 40 years’ imprisonment.
9. The Republic appealed the Manyeso case to the Supreme Court vide Petition No. E013 of 2024, *Republic vs. Julius Kitsao Manyeso*. The Supreme Court held as follows:-

“[64]. Paragraph 11 to 14 of the Muruatetu directions are very clear that the decision in the Muruatetu case did not invalidate mandatory sentences or minimum sentences in the Penal Code, *Sexual Offences Act* or any other statute. Further, that the Muruatetu case cannot be said to be the authority for stating that all provisions of the law prescribing minimum sentences are inconsistent with *the Constitution*.”

Paragraphs 93 to 97 of the Muruatetu decision are also explicit that it is not for the court to define what constitutes a life sentence. While we appreciated that a life sentence could mean a certain minimum or maximum time to be set by a judicial officer, this court made the following recommendations to the Attorney General to develop legislation on what constitutes a life sentence:

“94. We recognize that although the Judiciary released elaborate and comprehensive Sentencing Policy Guidelines in 2016, there are no specific provisions for the sentence of life imprisonment, because it is an indeterminate sentence. Nevertheless, we are in



agreement with the High Court decision in Jackson Wangui, supra, which found that it is not for the court to define what constitutes a life sentence or what number of years must first be served by a prisoner on life sentence before they are considered on parole. This is a function within the realm of the Legislature.

95. We also acknowledge that in Kenya and internationally, sentencing should not only be used for the purpose of retribution, it is also for the rehabilitation of the prisoner as well as for the protection of civilians who may be harmed by some prisoners. We find the comparative jurisprudence with regard to the indeterminate life sentence is compelling. We find that a life sentence should not necessarily mean the natural life of the prisoner; it could also mean a certain minimum or maximum time to be set by the relevant judicial officer along established parameters of criminal responsibility, retribution, rehabilitation and recidivism.

96. We therefore recommend that the Attorney General and Parliament commence an enquiry and develop legislation on the definition of ‘what constitutes a life sentence’; this may include a minimum number of years to be served before a prisoner is considered for parole or remission, or provision for prisoners under specific circumstances to serve whole life sentences. This will be in tandem with the objectives of sentencing.”

(65) From the above paragraphs of the Muruatetu case any reading of that decision ought to lead to the conclusion that it is upon the Legislature to enact legislation on what constitutes a life sentence and not the courts.

(66) We therefore find that the Court of Appeal violated the principle of stare decisis by misapplying the decision in Muruatetu and in finding the life sentences of imprisonment to be unconstitutional.”

10. From the above, it is clear to me that the Supreme Court has spoken with finality that unless and until Parliament changes the law, life sentence remained a lawful and sentence under the law.

11. It is my finding therefore that the Applicant was serving a lawful sentence. The sentence was affirmed by both the High Court and the Court of Appeal. The Applicant cannot come back to this court seeking to have his sentence reduced. There has to be an end to litigation and this court has no such jurisdiction to reopen his case.

11. In the end, it is my finding that the Application lacks merit and is consequently dismissed.

Orders accordingly.

**RULING DELIVERED, DATED AND SIGNED AT CHUKA THIS 30<sup>TH</sup> DAY OF SEPTEMBER, 2025.**

.....

**R. LAGAT-KORIR**

**JUDGE**



Ruling delivered in the presence of the Applicant acting in person and Ms Rukunga for the State; Moses (Court Assistant).

