



**M'Arimi v Director of Public Prosecution (Petition E039 of 2023)
[2025] KEHC 13593 (KLR) (29 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 13593 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
PETITION E039 OF 2023**

**SM GITHINJI, J
SEPTEMBER 29, 2025**

**IN THE MATTER OF: ENFORCEMENT OF RIGHTS OR FUNDAMENTAL
FREEDOMS UNDER ARTICLES 2(5) (6), 3 19(3),22,23(1)(3), 26, 27(1)(2)(4),
28, 29(D)(F), 50 (2) (P), AND 160(1) OF THE CONSTITUTIONAL KENYA
AND ALL OTHER ENABLING POWERS AND PROVISIONS OF THE LAW.**

AND

**IN THE MATTER OF: SECTION 216 AND SECTION
329 OF THE CRIMINAL ROCEDURE CODE.**

AND

IN THE MATTER OF: SECTION 296(2) OF THE PENAL CODE.

AND

**IN THE MATTER OF: THE SENTENCING POLICY
GUIDELINES IN THE REPUBLIC OF KENYA**

BETWEEN

MARTIN GIKUNDI M'ARIMI PETITIONER

AND

DIRECTOR OF PUBLIC PROSECUTION RESPONDENT

JUDGMENT

1. The Petitioner, one Martin Gikundi M'Arimi was charged, tried and convicted of the offence of robbery with violence Contrary to Section 296(2) of the Penal Code, in Criminal Case No. 3558 of 1999 where upon full hearing at Nkubu Law Courts, he was sentenced to the mandatory death penalty.
2. According to his filed petition dated 25th April, 2023, he filed an appeal to the High Court, Appeal Case No. 123 of 2001 of which was heard and dismissed. He did not give up and proceeded to the



Court of Appeal vide appeal No. 103 of 2003 of which was equally dismissed. He has now filed the present Constitutional Petition seeking, inter-alia, a declaration that the mandatory death sentence for robbery with violence is unconstitutional. He relies on the Supreme Court decision in Francis Karioko Muruatetu and Another –vs- Republic [2017] eKLR. His case is that Section 296(2) of the Penal Code deprives the court of the use of judicial discretion in a matter of life and death. That the mandatory nature of the death penalty deprives the courts of their legitimate jurisdiction to exercise discretion not to impose the death sentence in appropriate cases under the provisions of Section 216 and Section 329 of the Criminal Procedure Code.

3. He further avers that under Article 50(2)(p) of *the Constitution*, he was entitled to benefit from the least severe of the prescribed punishment.
4. Under Article 23(1) and 165(3)(b) of *the Constitution*, he submits that this court has judicial powers to determine application for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights.
5. The Respondent opposed the application, indicating that the issue raised has not been constitutionally settled on.
6. The issues which emerges for determination are:-
 1. Whether this court has jurisdiction to entertain the petition.
 2. Whether the Petitioner is entitled to resentencing in light of the Muruatetu decision.
7. On Jurisdiction, Article 165(3) indeed grants this court jurisdiction to hear Constitutional questions. However, the Petitioner has already involved this court's appellate jurisdiction where he challenged both conviction and sentence. The Court rendered itself on appeal and once it did so, it became functus officio in respect of the matter. The petitioner likewise went to the Court of Appeal and the appeal was equally dismissed. To entertain this Petition would amount to the High Court sitting on appeal over its own judgment and also reviewing a decision of a higher court in terms of jurisdiction.
8. In its directions of 6th July 2021, the Supreme Court clarified that Muruatetu is confined to murder cases and cannot automatically be extended to robbery with violence or other offences.
9. As such, this court lacks the requisite jurisdiction to entertain the petition and it must therefore fail. It is accordingly dismissed for want of jurisdiction.

DATED AND DELIVERED THIS 29TH DAY OF SEPTEMBER, 2025.

S. M. GITHINJI

JUDGE

