



**Muthama v Republic (Miscellaneous Application E397 of 2023)  
[2025] KEHC 13406 (KLR) (24 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13406 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
MISCELLANEOUS APPLICATION E397 OF 2023  
AM MUTETI, J  
SEPTEMBER 24, 2025**

**BETWEEN**

**ROBERT MUTUNGA MUTHAMA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant seeks to have his sentence reviewed arguing that the death sentence imposed upon him is harsh and excessive. The applicant relied on the decision of Francis Karioko Muruatetu & Another Vs Republic [2017] eKLR. The applicant invoked the provisions of Article 50(2) of the Constitution and section 333(2) of the Criminal Procedure Code.
2. The application was opposed by counsel for the Director of Public Prosecution who argued that the applicant having been sentenced by a Judge of this court after the Judge had considered his mitigation should not have his sentence reviewed for there is no legal or factual justification for such a review.
3. This court has perused the record in High Court Criminal Case No. 12 of 2010 and noted that the Judge in sentencing stated:

“I have considered the mitigation offered on behalf of the accused. I have also considered the circumstances of the case. In this case the facts of the case revealed aggravating circumstances whereby the accused not only fatally injured the deceased without any provocation whatsoever but also actively prevented her from being assisted to save their life. I sentence the accused to suffer death as provided by law Section 204 of the Penal Code.”
4. This court is of the view that the applicant having been sentenced by a Judge of concurrent jurisdiction cannot succeed in his quest for review. This court lacks jurisdiction to interfere.



5. The situation would have been different had the accused person been convicted and sentenced to death without the judge considering his mitigation.
6. The Francis Karioko Muruatetu & Another Vs Republic [2017] eKLR case did not find the death penalty to be unconstitutional but rather the mandatoriness of it. The Supreme Court did not rule out the sentencing of accused persons to death whereupon a judge handling the trial arrives at a conclusion that the circumstances surrounding the death of the deceased are so grave as to invite the most severe sentence of death. In this case, the judge considered the circumstances and found that the facts militated against the imposition of any other sentence other than that of death.
7. In conclusion therefore, the instant application fails for want of jurisdiction on the part of the court and secondly on the ground that the sentence imposed against the applicant was not only legal but also constitutional.
8. The application is therefore struck out and the file is hereby closed.
9. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 24<sup>TH</sup> DAY OF SEPTEMBER 2025.**

**A. M. MUTETI**

**JUDGE**

In the presence of:

Court Assistant: Habiba

Application present

Ms Dela holding brief Ogega for Respondent

