



**Ngiri v Republic (Miscellaneous Criminal Application E034 of 2024)
[2025] KEHC 13589 (KLR) (30 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 13589 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
MISCELLANEOUS CRIMINAL APPLICATION E034 OF 2024
SM GITHINJI, J
SEPTEMBER 30, 2025**

BETWEEN

GERVASIO KIMATHI NGIRI APPLICANT

AND

REPUBLIC RESPONDENT

JUDGMENT

1. The Petitioner herein one, Gervasio Kimathi Ngiri, was charged in the Lower Court with the offence of Robbery with violence, contrary to Section 296 (2) of the Penal Code.
2. Upon trial, he was found guilty, convicted and sentenced to suffer death sentence. This was on 25th April, 2007.
3. He appealed against the conviction and sentence to the high Court vide HCCRA No. 73 of 2007. The appeal was heard and dismissed for lack of merit.
4. From what I have picked from the petitioner’s submissions, he avers that the mandatory sentence of death as prescribed by Section 296(2) of the penal code for the offence of Robbery with violence in consistent with *the constitution* of Kenya 2010. He raises the issue in the context of recent jurisprudence, notably the decisions in Francis Karioko Muruatetu and another vs. Republic.
5. In this petition, he claims that he is entitled to a lenient sentence in tandem with Article 28 of *the constitution* which advocates for a sentence that promotes the dignity of an individual. He relies on the case of Omukanga vs. Republic (2023)eKLR.
6. What is not in doubt in this Petition is that the sentence being challenged was upheld by a court of concurrent jurisdiction, it therefore, follows that a court of concurrent jurisdiction lacks jurisdiction to entertain a Constitutional Petition challenging a conviction or sentence, where the same conviction or sentence has already been upheld on appeal by that very court. If this is to be allowed, it would



amount to the High Court sitting on appeal of its own decision. If a Petitioner still feels aggrieved after the appellate process, the next step lies in the Court of Appeal. After the appeal in the High court, the court became functus officio.

7. The bottom line is that the petition is dismissed for want of jurisdiction.

DATED AND DELIVERED AT MERU THIS 30TH SEPTEMBER, 2025

S.M. GITHINJI

JUDGE

