



REPUBLIC OF KENYA



**KENYA LAW**  
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**Irungu v Republic (Miscellaneous Criminal Case E011 of 2025)  
[2025] KEHC 14017 (KLR) (1 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14017 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MURANG'A  
MISCELLANEOUS CRIMINAL CASE E011 OF 2025  
CW GITHUA, J  
OCTOBER 1, 2025**

**BETWEEN**

**EUSTON IRUNGU ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant, Euston Irungu approached this court through a Notice of Motion dated 13<sup>th</sup> June 2024 seeking resentencing. He was convicted of the offence of robbery with violence contrary to Section 296(2) of the Penal Code in the Chief Magistrate's Court Murang'a Criminal Case No.867 of 2012. He was sentenced to suffer death as prescribed by the law. His appeal to the High Court being Criminal Appeal No.11 of 2014 was heard and dismissed by Riechi J on 22<sup>nd</sup> July 2016. His second appeal to the Court of Appeal is pending hearing.
2. Relying on several High Court decisions which held that the minimum mandatory sentences prescribed for various offences in the *sexual offences Act* were unconstitutional as well as the Supreme Court's decision in Francis Kariuki Muruatetu & Others V Republic (2017) eKLR, the applicant argued that the death penalty imposed on him by the trial court was unconstitutional for fettering the courts discretion in determining an appropriate sentence given the circumstances of his case and that he was entitled to resentencing.
3. The application was opposed by the respondent through learned prosecution counsel Ms. Muriu who argued that this court lacked jurisdiction to review the applicant's sentence given that it was confirmed by a court of concurrent jurisdiction.
4. I have considered the application, the response by the respondent and the applicable law. Having done so, I find that the applicant's application is not only misconceived but is also premature. I say so because the applicant has admitted to having filed the instant application when his second appeal to the Court



of Appeal was pending hearing. Instead of filing this application, he ought to have actively pursued the hearing and determination of his second appeal.

5. As his second appeal challenges the decision of this court in dismissing his first appeal on both his conviction and sentence, the legality or otherwise of his sentence is a live issue pending before the Court of Appeal which is superior to this court. That being the case, this court cannot adjudicate or determine the issue raised by the applicant regarding the constitutionality or otherwise of his sentence during the pendency of his second appeal. Any attempt to do so would be tantamount to violating the established hierarchy of courts enshrined in Article 162 (1) of the Constitution.
6. In addition, even if the matter was not pending hearing at the Court of Appeal, the application would still have failed because the special jurisdiction of resentencing created by the Supreme Court in Francis Kariuki Muruatetu & Others V Republic (Supra) applied only to persons convicted of the offence of murder who were sentenced to the mandatory death penalty. It does not apply to persons convicted and sentenced with respect to any other offence including the offence of robbery with violence for which the applicant stands convicted - See  

Francis Kariuki Muruatetu & Others V Republic No. 2 of July 2021; Republic V Julius Kitsao Manyeso ( Supreme Court Petition No.E013 of 2024 (2025) KESC 16 (KLR).
7. Lastly, I think it is important to mention that the procedure the applicant chose to approach the court was wrong. He filed a Misc. Criminal Application seeking orders to have the penal provision under which he was sentenced declared unconstitutional. He ought to have filed a constitutional petition precisely articulating the reasons or basis upon which he wanted to have the relevant statutory provisions declared unconstitutional.
8. In the end and for all the foregoing reasons, I find that this application lacks merit and it is hereby dismissed.

Orders accordingly.

**DATED, SIGNED AND DELIVERED AT MURANG'A THIS 1<sup>ST</sup> DAY OF OCTOBER, 2025.**

**HON. C. W. GITHUA**

**JUDGE**

In the present of;

The Accused

Ms Muriu for the Respondent

Ms Susan Waiganjo, Court Assistant

