



**Kogo v Republic (Criminal Revision E012 of 2025)
[2025] KEHC 14101 (KLR) (2 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14101 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL REVISION E012 OF 2025
JM NANG'EA, J
OCTOBER 2, 2025**

BETWEEN

IBRAHIM KIPROTICH KOGO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant was charged with and convicted of the offence of Violent Robbery Contrary to Section 296 (2) of the Penal Code before the Chief Magistrate's Court in Nakuru. He was sentenced to suffer death in Criminal Case Number 1708 of 2001 as mandated by the law. His appeal to this court vide Criminal Appeal No. 131 Of 2001 was unsuccessful. A second appeal was lodged in the Court of Appeal through File No. 311 of 2006 but was also wholly dismissed, provoking an undated Notice of Motion application seeking review of his sentence and now for consideration before me. In particular, the Applicant is seeking a determinate sentence, arguing that the death sentence is unconstitutional.
2. The Applicant restates the factual position of this matter in his affidavit in support of the Application. He, however, ventures to depose to legal issues which are neither based on his personal knowledge nor advice as required by the law governing swearing of affidavits.
3. Both the Applicant and the Prosecution Counsel put in written submissions which I have carefully perused against the Application.
4. By dint of the recent Supreme Court's case of Joshua Gichuki Mwangi & Others in Petition No. E018 of 2023 relied upon inter alia by the Prosecutor in opposition to the Application, any challenge on the constitutional validity of mandatory sentences for other capital offences, other than murder in respect of which the Supreme Court has already delivered itself in the famous Muruatetu case, is welcome for determination by the High Court and the Court of Appeal where necessary, in the event of an appeal.



This challenge is, however, to be mounted in a proper substantive Constitutional Petition and not vide a miscellaneous criminal application such as brought by the Applicant.

5. The Applicant makes detailed submissions herein on what he considers as unconstitutionality of a mandatory death sentence for a violent robbery charge of which he has been convicted. The court has been referred to many decisions of this court including *Kathewa Laichena vs Republic (2018)eKLR* and *William Okungu Kittiny vs Republic (2018) eKLR* which applied the reasoning in the *Muruatetu* case to outlaw sentences other than mandatory or minimum sentences provided for by some laws including the Penal Code and the *Sexual Offences Act*.
6. In my view as observed hereinabove, the Applicant cannot raise such a weighty constitutional issue in a Miscellaneous Criminal Application. As held by the Supreme Court in the case of the said Joshua Gichuki Mwangi supra, a proper substantive Constitutional Petition should be filed in the High Court and where necessary, escalated to the Court of Appeal and perhaps to the Supreme Court for exposition of a final legal position. Because of the importance of such a Petition, proper Respondents would include the Director of Public Prosecution, the Attorney General and other Interested Parties as may be identified.
7. This court will not therefore treat this application as the Petition contemplated by the Supreme Court in its cited decision.
8. For the reason given hereinabove that death sentences in violent robbery cases have not been invalidated, this court has no jurisdiction to mete out a different sentence.
9. The Application is accordingly dismissed in its entirety.

J. M. NANG'EA

JUDGE.

RULING DELIVERED THIS 2ND DAY OF OCTOBER, 2025 IN THE PRESENCE OF:

The Prosecution Counsel, Mr Wakasyaka

The Applicant, present (online)

Court Assistant (Jeniffer)

J. M. NANG'EA

JUDGE.

