

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MAKADARA**  
**CRIMINAL DIVISION**  
**CRIMINAL CASE NO E 067 OF 2025**  
**GEORGE KIARIE MWAURA ..... 1<sup>st</sup>**  
**APPLICANT**  
**ROBERT KARIUKI NJERI .....2<sup>nd</sup>**  
**APPLICANT**  
**VERSUS**  
**REPUBLIC .....**  
**RESPONDENT**

**RULING**

**HISTORY OF LITIGATION**

1. The applicants were charged with six counts of the offence of robbery with violence contrary to section 295 as read with section 296 (2) of the Penal code the particular of count 1, of which was that on the 25<sup>th</sup> day of august 2015 in Dandora jointly with others not before the court , being harmed with dangerous weapons namely pistols , knives and panga robbed Evanton Asila Atola Safaricom and Airtel credit card , computer adaptor techno mobile phone , ksh 1000 different dominations coins, cash kshs 20,000 all valued at approximately kshs 40,000 and immediately before or after the time of such robbery used actual violence against the said Evans Asila Atola
2. The 1<sup>st</sup> Applicant faced an alternative count of handling stolen property , the particular of which was that on the 25<sup>th</sup> August 2015 at Korogocho bridge , otherwise that in the course of stealing dishonestly handle some Safaricom and airtel credit cards worth kshs 260 one adapter one techno mobile 3G with sim , kshs 863 of different coins in a plastic contained , one

wallet containing ID card , knowingly or having reason to believe them to be stolen goods .

3. On count 2, the particulars were that he robbed Toby Anginya Ouma , one wallet . identity card, other personal business cards, cash kshs 2000 all valued at kshs 5000.
4. I count three robbed Charles Omollo Ogallo two Nokia mobile phone Ci&LHR identity card, cash 10700 all valued at kshs 30,000, count 4 robbed Dominic Muteti Mbingu cash 14,000. count 5 robbed Christopher Kiragu Chege of wallet and cash 2000 all valued at kshs 3000 and count 6 robbed Victor Many Oduya of his personal effect and cash kshs 10,000.
5. He further faced one count of being in possession of fire arms without a fire arms certificate contrary to **section 4(1) (2) (a) as read with Section 4(3)(a) of the fire arms Act.**
6. They were both convicted on count 2 and 3 of robbery with violence while the 1<sup>st</sup> applicant was convicted on the count on possession of firearm without a valid certificate and sentenced twenty years on the counts of robbery with violence and ten years on the count of possession of fire arm to run concurrently., less the years served in custody .
7. On the 4<sup>th</sup> October 2023, the 1<sup>st</sup> applicant was granted leave to file an appeal out of time in Nairobi Misc. Criminal Np E067 of 2023 and the same filed criminal appeal no E279 of 2023 at Milimani in which the respondent filed grounds of opposition and written submissions before being transferred to this court on 30<sup>th</sup> January 2025 and registered as Criminal Appeal no 007 of 2025 which appeal was on 27<sup>th</sup> march 2025 withdrawn by the appellant.

8. In the meantime, the applicant filed Criminal Revision no E1775 of 2024 at Milimani in which he sought for non-custodial sentence for the remainder of his term having served a third of the sentence which application was on 13<sup>th</sup> march 2025 once again transferred to this court and registered as Criminal Revision No E099 of 2025.
9. Notwithstanding the said transfer, the applicant filed this current application before this court on certificates of urgency in which he sought the review of his sentence of 29 years to a lenient sentence in light of what he considered mitigating factors and circumstances **under section 219 and 329 of the CPC.**
10. In support of the application he filed an affidavit in which he deposed that he was sentenced to two 20 years and one ten-year sentence less the period served in custody to run concurrently. He contended that there were mitigating circumstances which warrants sentence review.
11. It was deposed that he had undergone extensive rehabilitation while in prison , he was a first offender and the sole bread winner of his family who were now suffering and therefore the court should set aside the sentence and substitute it with a term of ten years , considering his age so as to give him hope.
12. The 2<sup>nd</sup> applicant filed **Revision no E1775 of 2024** at Milimani in which he sought for non-custodial sentence and or an order that the court review the twenty-year sentence downwards , considering the remainder of three years. He sought for a substitution thereof with a non-custodial sentence .

13. The state did not file any affidavit in opposing the application herein.

### **SUBMISSIONS**

14. At the hearing of the applications , the two files were consolidated for purposes of disposal. The applicants submitted that they had served eleven years and that whereas the police stated that the 1<sup>st</sup> applicant had a gun , he was not armed. The 2<sup>nd</sup> applicant stated that he was seeking a reduction of one year , whereas he was convicted on two counts of robbery with violence and having firearm without a certificate.

15. Ms Kariuki for the prosecution submitted that there were no grounds for review of sentence noting that there was a pre-sentencing report which included victim impact statement.

16. Kamiti prison confirmed that the applicants were remaining with three years

### **DETERMINATION**

17. The issue of resentencing is as confusing as they come having been introduced in our jurisprudence by the Supreme Court in the Muruatetu 1 decisions.

18. The issue for determination on this application is whether this court has jurisdiction to review the determination of the trial court on sentence through revision?

19. The revision jurisdiction of this court is granted under Article 165(6) which gives the court the supervisory jurisdiction over the Subordinate courts and Section 362 of the Criminal Procedure Code which empowers the court to call for and examine the record of any Criminal Proceedings of a

subordinate court for purposes of satisfying itself as to the correctness, legality or propriety of any findings, sentence or order recorded or passed and as to the regularity of any proceedings of any such court.

20. In this matter there is no evidence that the sentence was illegal erroneous or unlawful

21. This court therefore does not have jurisdiction to review the sentence of the trial court on the ground that the applicant remains with three years which is only a special jurisdiction granted to the court under what has been classified as prison decongestion.

22. I therefore decline to exercise jurisdiction herein since this matter is not brought under the prison decongestion and having noted that the sentence available under the section the applicants were charged in was supposed to be imprisonment for life and therefore they had benefitted from a lesser sentence .

23. I therefore find no merit on the applications herein which I hereby dismiss.

**DATED SIGNED AND DELIVERED THIS 7<sup>th</sup> DAY of  
OCTOBER 2025**

**J. WAKIAGA  
JUDGE**

In the presence of  
Court Assistant - Irene  
Applicants in person  
Ms Kariuki for the state