

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KIBERA
CRIMINAL PETITION NO. E017 OF 2025

CHARLES RUKUNGU GIKONYO.....
PETITIONER

VERSUS

REPUBLIC.....
RESPONDENT

(Being a petition for resentencing in Kibera Chief Magistrate's Court Criminal Case No. 8227 of 1997 and Nairobi High Court Criminal Appeal No. 1071 of 1998)

JUDGEMENT

1. The petitioner was charged, convicted, and sentenced to death for the offence of robbery with violence contrary to section 296(2) of the Penal Code. In count II, he was sentenced to three years imprisonment for grievous harm contrary to 234 of the Penal Code. His appeal to this court was dismissed and the sentence in count I affirmed. He is currently serving a life sentence. The sentence in count II, was enhanced to fifteen (15) years imprisonment.
2. The petitioner has now approached this Court by way of a constitutional petition seeking an order for resentencing. He contends that the mandatory nature of the death prescribed under section 296(2) of the Penal Code Act is unconstitutional. He now invokes sections 216 and 329 of the Criminal Procedure Code (Cap. 75, Laws of Kenya), urging the Court to consider his mitigation and substitute the life sentence with a definite term of imprisonment.

3. The issue for determination is whether the death sentence imposed upon the petitioner is unconstitutional in light of the recent pronouncements of the Supreme Court on mandatory and minimum sentences.

4. The doctrine of stare decisis obliges this Court to follow the binding decisions of the Supreme Court. Article 163(7) of the Constitution provides that:

“all courts, other than the Supreme Court, are bound by the decisions of the Supreme Court.”

5. This principle ensures consistency and certainty in the administration of justice, and it leaves no room for a subordinate court to deviate from a settled position of law declared by the apex court.

6. In **Republic v Joshua Gichuki Mwangi [2024] KESC 34 (Petition No. E018 of 2023)**, the Supreme Court addressed the constitutionality of minimum and mandatory sentences under the laid down statute. The Court held that the Court of Appeal had acted in error by assuming original jurisdiction to determine the constitutionality of minimum sentences when that issue had not been raised or determined at the trial level. The Supreme Court consequently set aside the Court of Appeal’s judgment that had declared the minimum sentences for sexual offences unconstitutional.

7. The Supreme Court further clarified that its earlier decision in **Francis Karioko Muruatetu & Another v Republic [2017] eKLR** was limited to the mandatory death sentence under section 204 of the Penal Code. It did not invalidate statutory minimum or mandatory sentences provided for in other statutes, including the

Penal Code and the Sexual Offences Act. The Court reaffirmed that Parliament has the constitutional authority to define offences and prescribe corresponding penalties, including minimum or mandatory terms, provided such laws do not infringe the Bill of Rights. Judicial discretion in sentencing must therefore operate within the framework established by statute.

8. The ratio decidendi in **Joshua Gichuki Mwangi (supra)** is binding on this Court. The Supreme Court's pronouncement conclusively settles the question of the constitutionality of minimum and mandatory sentences. Consequently, the petitioner's challenge to the life sentence cannot stand.
9. The record of the trial court demonstrates that the learned magistrate considered the petitioner's mitigation and his status as a first offender before imposing the sentence prescribed by law. There is no indication that the trial court overlooked any material factor or acted under a misapprehension of the law.
10. The petitioner also exercised his right of appeal before the High Court where his conviction and sentence were reconsidered and upheld. In view of the authoritative guidance of the Supreme Court, this Court finds no legal basis to interfere with the sentence imposed. The right forum for the applicant is the Court of Appeal.
11. The claim that the life sentence is unconstitutional is therefore without merit. The petition discloses no violation of constitutional rights or any miscarriage of justice that would warrant intervention by this Court.
12. Accordingly, the petition is found to be devoid of merit and is hereby dismissed in its entirety. However

Orders accordingly.

**Judgement dated and delivered this 22nd day of
October 2025**

D. KAVEDZA
JUDGE

In the presence of:

Petitioner Present

Mutuma for the Respondent

Karimi Court Assistant.

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