



**Kimani v Attorney General & another (Constitutional Petition  
E017 of 2024) [2025] KEHC 15622 (KLR) (30 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15622 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
CONSTITUTIONAL PETITION E017 OF 2024  
FN MUCHEMI, J  
OCTOBER 30, 2025**

**IN THE MATTER OF ALLEGED CONTRAVENTION OF RIGHTS OR FUNDAMENTAL  
FREEDOMS UNDER ARTICLES 2, 10, 50(1), 51(3) AND 25(A) & (C) OF THE  
CONSTITUTION OF KENYA 2010 AND IN THE MATTER OF ARTICLES 19,  
20, 21, 23, 24, 27, 165, 258 & 259 OF THE CONSTITUTION OF KENYA, 2010**

**BETWEEN**

**SAMWEL KANAMBI KIMANI ..... PETITIONER**

**AND**

**THE HON ATTORNEY GENERAL ..... 1<sup>ST</sup> RESPONDENT**

**DIRECTOR OF PUBLIC PROSECUTION ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

**Brief Facts**

1. This petition dated 9<sup>th</sup> August 2025 seeks the following orders:-
  - a. A declaration that the death sentence imposed by the trial court and confirmed by the Nairobi High Court is inconsistent with Articles 50(2)(h) & (p) and 25(a) & (c) of *the Constitution* of Kenya, 2010.
  - b. A declaration that the constitutional rights of the petitioner have been violated.
  - c. An order remitting the petitioner's case to the trial court for mitigation and determination of appropriate sentence in line with Article 50(2)(p) of *the Constitution* of Kenya, 2010.
  - d. An order, in the alternative, for a review of the petitioner's case in the interest of justice.
2. The petitioner was convicted by Thika Chief Magistrate, Criminal Case No. 5029 of 2007 with the offence of robbery with violence contrary to Section 296(2) of the Penal Code and was sentenced to



death. The applicant appealed to the High Court in Nairobi being Criminal Appeal No. 273 of 2012 and the learned Judge substituted the death sentence with life imprisonment on 20<sup>th</sup> April 2012. The petitioner lodged a second appeal at the Court of Appeal in Nairobi which did not succeed as he was informed that the trial records were lost.

3. The petitioner avers that he has served seventeen (17) years in prison and seeks to have the sentence commuted to time served. The petitioner argues that the death sentence imposed by the trial court and affirmed by the High Court is inconsistent with Articles 50(2)(h), (p) and 25(a) & (c) of *the Constitution* of Kenya. The petitioner states that he is fully reformed and rehabilitated.
4. The 2<sup>nd</sup> respondent filed grounds of opposition and submissions dated 19<sup>th</sup> May 2025 and argues that the instant court became functus officio and has no jurisdiction to resentence since a court of concurrent or similar jurisdiction, that is, the Nairobi High Court vide Appeal No. 273 of 2012 upheld the sentence of the trial court. The 2<sup>nd</sup> respondent states that the death sentence was commuted to life sentence by the then President Mwai Kibaki. The respondent further argues that asking the current court to resentence is equivalent to asking the court to sit as an appellate court against its own judgment and determine whether the appeal has chances of success.
5. The respondent states that the issue of sentence has been dealt with conclusively to the effect that the appeal on conviction and sentence had no merit in the High Court. The respondent further states that the applicant is just testing the waters and trying his lack thus forum shopping which actions should be discouraged to deter other potential applicants with similar applications.
6. Parties put in written submissions.

### **The Petitioner's Submissions**

7. The petitioner refers to Articles 28 and 50(2)(p) of *the Constitution* of Kenya and the cases of Justus Ndung'u vs Republic (no citation given) and Manyeso vs Republic Criminal Appeal 12 of 2021 and submits that the sentence of life imprisonment is unconstitutional.
8. The petitioner submits that he is a first time offender and he was young when he committed the offence yet he had his whole life taken away from him by the unconstitutional sentence of life imprisonment. The petitioner further submits that he is remorseful and has maintained a clean record and contributed to the prison rehabilitation programmes.
9. Relying on the cases of Muriuki vs Republic Criminal Appeal E177 of 2024 [2025] KEHC 62 (KLR); Ayako vs Republic (Criminal Appeal 22 of 2018) [2023] KECA 1563 (KLR) and Mwangi vs Republic (Criminal Revision E018 of 2024), the petitioner argues that he has been in custody for 17 years and thus his sentence ought to be commuted to the time served.
10. The petitioner refers to Section 362 and 367 of the Criminal Procedure Code and the case of Muruatetu & Another vs Republic; Katiba Institute & 5 Others (Amicus Curiae) (Petition 15 & 16 of 2015) (Consolidated) [2017] KESC 2 (KLR) and submits that the High Court has revisionary powers to correct or prevent a miscarriage of justice or to right what appears to be an unconstitutional sentence.

### **The Respondent's Submissions**

11. The respondent reiterates what she has deponed in her affidavit and further refers to the case of Chege vs Republic (Criminal Appeal 98 of 2019) (2025) KECA 1207 (KLR) and submits that the death



sentence was upheld on the basis that mandatory or minimum sentences imposed in the statutes have not been invalidated.

## The Law

12. This court is empowered by Article 165(3) of *the Constitution* of Kenya to determine violation of one's constitutional rights. The petitioner has raised some constitutional issues in the instant petition. He has cited several articles of *the Constitution* which he explains that he has locus standi to file this petition which position is well grounded. The other articles describe various rights and freedoms available to Kenyan citizens in the Bill of Rights.
13. The petitioner seeks several remedies in his petition. Firstly he urges the court to make a declaration that the death sentence imposed by the trial court and confirmed by the Nairobi High Court is inconsistent with Articles 50(2)(h) & (p) and 25(a) & (c) of *the Constitution*.
14. Article 50 (2) (h) & (p) provides:-
  - Every accused person has the right to a fair trial, which includes the right-
  - To have an advocate assigned to the accused person by the State and at State expense if substantial injustice would otherwise result, and to be informed of this right promptly;
  - To benefit of the least severe of the prescribed punishments for an offence, if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing.
15. Section 296(2) of the Penal Code provides:-
  - If the offender is armed with any dangerous or offensive weapon or instrument, or is in company with one or more other person or persons, or if, at or immediately before or immediately after the time of the robbery, he wounds, beats, strikes or uses any other personal violence to any person, he shall be sentenced to death.
16. The trial court in Thika Criminal Case No. 5029 of 2007 sentenced the petitioner to death as provided by law in compliance with the mandatory death sentence. The applicant then lodged an appeal to the High Court at Nairobi on the conviction and sentence vide Criminal Appeal No. 273 of 2012 and his sentence was substituted to life imprisonment. The applicant has brought the instant application on the basis of the mandatory death sentence yet on the other hand the petitioner has deponed that he is serving life imprisonment. The petitioner has failed to provide any explanation or clarification why he is challenging the mandatory death sentence which is not applicable in his case since he is serving life imprisonment.
17. It is confirmed from the petitioner's averments that he is serving a life sentence and not death sentence. As such, it is not proper for the petitioner to bring the petition challenging the mandatory death sentence which is not applicable to him since he is serving a life sentence. For this reason, this petition is no doubt misconceived.
18. The petitioner has further argued that his constitutional rights have been violated yet the sentences imposed on him were legal in that they are provided by the law in the relevant provisions of the penal code, specifically Section 296 (2). This sentence was reviewed on appeal in Criminal Appeal No. 273 of 2012 to life imprisonment.
19. This petition is, therefore, misconceived, improperly before the court and an abuse of the court process. The petition thereby ought to be struck out.



20. As for the constitutionality of death sentence this sentence was set aside on appeal and is no longer applicable to the applicant. The current sentence of life imprisonment the petitioner is serving, is provided for by the law and was passed by a competent court, that is, the High Court of Kenya. The Petitioner has not demonstrated the alleged unconstitutionality of life imprisonment. As such, there is no evidence presented to this court that any constitutional provision was violated by the trial court or even the appeal court.
21. In the alternative, the petitioner prays for review of his sentence as well and that his case be remitted to the trial court for mitigation and resentencing. Article 50 (2) (9) of *the constitution* provides: -
2. Every accused person has the right to a fair trial, which includes the right:-
    - q. If convicted, to appeal to, or apply for review by a higher court as prescribed by law.
22. The petitioner is coming to court twenty (20) years after he was sentenced. The sentence of death was reviewed by the High Court in 2012 to life imprisonment. Having chosen the option of appeal in Nairobi High Court Criminal Appeal No.273 of 2012, the petitioner is not entitled to review before this court in that he exhausted his remedy under Article 50 (2)(q) of *the Constitution*. It is further noted that Article 50 is clear that review can only be done in a higher court. Having had his sentence reviewed by the High Court on appeal, this court which is of concurrent jurisdiction has no jurisdiction to do a further review.
23. Consequently, I find this constitutional petition misconceived and improperly before the court. The same case applies to the review of sentence sought herein.
24. The petition is hereby struck out.
- It is hereby so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 30<sup>TH</sup> DAY OF OCTOBER 2025.**

**F. MUCHEMI  
JUDGE**

