



**Mwai v Republic (Miscellaneous Criminal Case E438 of 2024)  
[2025] KEHC 15347 (KLR) (Crim) (29 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15347 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
MISCELLANEOUS CRIMINAL CASE E438 OF 2024  
AM MUTETI, J  
OCTOBER 29, 2025**

**BETWEEN**

**ELIUD KIMANI MWAI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant through an undated Notice of Motion application received in court in 18<sup>th</sup> November 2024 seeks to have his sentence reviewed.
2. The applicant has invoked the provisions of Article 165 (6) of the *Constitution* and Rule 21 of the practice directions and standardization of practice and procedures in the High Court Rules 2021.
3. The applicant was sentenced to death for murder on 1<sup>st</sup> April 2014.
4. The applicant appealed and has since exhausted his right of appeal.
5. The applicant has variously moved the High Court to have the sentence varied but he has been unsuccessful.
6. It does appear that the applicant is not about to tire having lost MISC. No. E369/ 2024, MISC. E 242 of 2024.
7. The question that arises now is how can a litigant such as the applicant be prevented from saddling the court with applications that are manifestly hopeless and incompetent.
8. The right of access to court under Article 45 of the *Constitution* is not absolute. The right is subject to limitation under Article 24 of the *Constitution* just like any other right.



9. A party who has been heard by courts does not deserve to be entertained every time he shows up in court on the basis of the same facts raising similar issues.
10. It is precisely for those reasons that the rules of procedure provide for striking out matters that are res judicata in both criminal and civil practice.
11. In *Frank Vs. Mangum* 237 U.S 309 , 59 L. Ed 969, 35 Sup .Ct. 582 (1915) the court stated:

“.... A question of fact or of law distinctly put in issue directly determined by a court of competent jurisdiction cannot afterwards be disputed between the same parties. The principle is as applicable to the decisions of Criminal courts as to those of civil jurisdiction.”
12. The issues raised in the instant application were canvassed and decided on to attempt to reopen the matter is to engage in outright abuse of the legal process.
13. It amounts to vexing the court and the applicant must be stopped.
14. The courts of this country have to struggle on a daily basis with an ever rising case backlog.
15. The courts do not have the luxury of entertaining multiple applications from the same litigant on the same issue.
16. The courts must be ready to shut the door upon such litigants knocking at the hallowed gates of our temples of justice.
17. The time spent on those kind of applications could be better utilized in determining matters of other more deserving litigants.
18. The court has taken judicial notice of the applicant and since the applicant was heard on 15/5/ 2025 during which he admitted that he had filed a series of similar applications, this court considering the grounds of opposition filed by the Director of Public Prosecution has no hesitation in declaring the applicant of vexations litigant in line with Section 2 of the Vexations Proceedings Act Cap 41 of the Laws of Kenya.
19. The grounds of opposition filed by the Director of Public Prosecutions do suffice the purposes of declaring the applicant a vexation’s litigant since under Article 156 of the *Constitution* of Kenya the Attorney General has ceased his role as the prosecutor thus for purposes of Section 2 of the Vexations Proceedings Act in relation to Criminal proceedings the proper office of law would be the Director of Public Prosecutions reading the Section with the necessary modification and adaptation as per Section 7 of the Sixth Schedule of the *Constitution*.
20. The consequence of the order declaring MR. Eliud Kimani Mwai a vexatious litigant is that the registry shall not henceforth accept to register any further application by the applicant in relation to this matter.
21. In *P.G Jose Vs. T.K Madhu* 1994 CRILJ 3025 the Kerala High Court in dealing with a similar litigant struck out his matter and gave notice to the registries where MR. JOSE had filed multiple suits.
22. Accordingly, the instant application is struck out and a Notice should be sent to the officer in charge of the prison where Mr. Eliud Kimani Mwai is informing him of the orders this court so as to ensure that no further filing is done by the applicant on the issue of sentence.
23. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 29<sup>TH</sup> DAY OF OCTOBER 2025.**



**A. M. MUTETI**

**JUDGE**

In the presence of:

Court Assistant: Habiba

In person for the Applicant

Ms Ogega for the State

