



**Njagi v Republic (Miscellaneous Criminal Application E071 of 2025)  
[2025] KEHC 15261 (KLR) (29 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 15261 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT EMBU  
MISCELLANEOUS CRIMINAL APPLICATION E071 OF 2025  
RM MWONGO, J  
OCTOBER 29, 2025**

**BETWEEN**

**ALEX MWANIKI NJAGI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

**The Application**

1. Through a notice of motion dated 07<sup>th</sup> October 2024, the applicant is seeking rehearing of mitigation and consequently, resentencing based on the decision by the Supreme Court in *Muruatetu & another v Republic; Katiba Institute & 4 others (Amicus Curiae)* [2021] KESC 31 (KLR) and the decision of the High court in *Joseph Kaberia Kahinga , Joseph Barii Imiamba, Frederick David Tsuma, Joseph Mutuma, Daniel Kioko Mbuva, Joseph Mwaura, Musa Omolo Ogolla, Peter Matiku Muhiru, Titus Mutulu Kimomo, Aggrey Chiteki, Wilson Mwangi Kinyua & Ibrahim Ali Halake v Attorney General* [2016] KEHC 3130 (KLR). He sought that the court reviews the sentence imposed by the trial court and aligns the same to *the constitution* and Judiciary Sentencing Policy Guidelines.
2. Through a constitutional petition of even date, the applicant raised to the court the question of validity of the death sentence meted out upon him before it was commuted to life imprisonment through a presidential directive in 2016. He attacked
3. the indeterminate nature of the life imprisonment sentence as it violates his constitutional right to dignity under Article 28 and the right to freedom and security under Article 29(d)&(f) of *the Constitution*.
4. The applicant stated that during the hearing, he was unable to put up a strong defense because he was unrepresented and so he was prejudiced. He stated that the court has the duty to protect human rights



in accordance with *the constitution* and international law provisions. He stated that he is now reformed and he is involved in constructive activities.

5. Through the amended petition dated 15<sup>th</sup> May 2025, the applicant prayed for:
  - a. A declaration that the continued incarceration of the Petitioner under the current sentence is unconstitutional and violates his rights under Articles 27, 28, 29 and 50 of *the Constitution* of Kenya, 2010.
  - b. An order commuting the Petitioner's sentence to a term that reflects the rehabilitative strides made by the Petitioner and the interests of justice.
  - c. An order commuting the petitioner's sentence to the term already served that reflects the rehabilitative strides he has made.
  - d. An order commuting the Petitioner's sentence to probation as provided for in section 4(2) of the *probation of offenders Act*.
  - e. Any other orders that this Honorable Court may deem fit to grant in the interests of justice.

Background of the case in the trial court

6. The applicant was convicted and sentenced to death for the offence of robbery with violence contrary to section 296(2) of the Penal Code in Embu MCCR no. 924 of 2013. He challenged the conviction and sentence through Embu HCCRA no.10 of 2014 and Nyeri Court of Appeal Criminal Case No. 137 of 2018. Both appeals were dismissed. The death sentence was commuted to life imprisonment through a Presidential directive in 2016. Through the present application/petition, he is seeking resentencing with reference to the commuted sentence.

### **Grounds of Opposition**

7. The respondent filed grounds of opposition stating the court cannot use its discretion to alter a sentence that was imposed by the law. That the only organ that can alter sentences imposed in statute is Parliament the law-making branch of government. It stated that on this basis, the court lacks jurisdiction to determine the application.

### **Parties' Submissions**

8. The application was canvassed by way of written submissions.
9. The applicant submitted on the progress he has made towards rehabilitation and he produced accolades and recommendation letters in support of his submission. He stated that he regrets being involved in the offence and that he has tried to make amends with the victims of his actions. He did not avail any evidence of these attempts. On the issue of sentencing, he stated that the aforementioned provisions of *the Constitution* were violated and that resentencing is necessary on that basis. He urged the court to impose a non-custodial sentence.
10. On its part, the respondent submitted that the court does, indeed, have jurisdiction to determine a question of violation of constitutional rights. However, it lacks jurisdiction to review a sentence imposed by the law. It relied on Articles 23(1), 94(1) and 165(a&b) of *the Constitution* and the cases of *Jasbir Singh Rai & 3 Others v Tarlochan Singh Rai & 4 others* [2007] KECA 21 (KLR), *Jackson Maina Wangui v Republic* [2012] KEHC 3013 (KLR), *Igiro v Republic* [2023] KECA 926 (KLR) and *Lawrence v Republic* [2021] KECA 172 (KLR). It argued that the law has not been amended to enable sentence review.



## Issues for Determination

11. The issues for determination are:
  - a. Whether the court has jurisdiction to entertain the application/petition; and
  - b. Whether the sentence should be reviewed.

## Analysis and Determination

12. The applicant was initially sentenced to death by the trial court on 10<sup>th</sup> October 2014. This sentence was upheld by the High Court through a judgment delivered on 18<sup>th</sup> December 2018; and similarly, by the Court of Appeal through a judgment delivered on 02<sup>nd</sup> February 2024. The applicant then filed an application dated 20<sup>th</sup> May 2024 before the trial court seeking resentencing. The application was dismissed through a ruling delivered on 25<sup>th</sup> November 2024 in which the trial court found itself to be *functus officio*, lacking jurisdiction to reconsider the sentence. This death sentence was commuted to life imprisonment through a Presidential directive in 2016.
13. The petition herein raises questions of interpretation of the bill of rights under *the Constitution*. It is, therefore, rightly before this court because the High Court has exclusive jurisdiction under Article 165(3) of *the Constitution* to determine cases where violations of the rights and fundamental freedoms of citizens under the Bill of Rights have been alleged. To that extent, this Court has jurisdiction.
14. In considering whether or not resentencing may be allowed, the constitutional violations alleged by the petitioner/applicant have been addressed by superior courts in previous decisions. In *Manyeso v Republic* [2023] KECA 827 (KLR), the Court of Appeal took the view that the indeterminate nature of the life imprisonment sentence is discriminatory. That court went on to define life imprisonment to mean 40 years imprisonment. The same court in the case of *Ayako v Republic* [2023] KECA 1563 (KLR) determined life imprisonment to mean 35 years imprisonment.
15. However, these 2 decisions were overturned by the Supreme Court in *Republic v Ayako* [2025] KESC 20 (KLR) and *Republic v Manyeso* [2025] KESC 16 (KLR). In its decisions in these 2 cases, the Supreme Court stated that the role of the court is limited to interpretation of the law and it does not extend to altering sentences already imposed in law. The court stated that law review is a preserve of the legislature and that the sentences provided under statute should be applied as they are without alteration.

## Conclusions and Disposition

16. On this basis, there is no room to review the life imprisonment sentence that the applicant is serving, given the constraints of written law and current jurisprudence. As regards the death sentence which he was handed upon conviction by the trial court, the position in law and jurisprudence is clear that it is a lawful sentence that may be imposed when the circumstances of the case demand its application as restated in *Muruatetu 1*. Paragraph 2.2.6 of the Judiciary Sentencing Policy Guidelines also sets out the guideline for such sentence.
17. Ultimately, I find that the application herein lacks merit and is hereby dismissed. The constitutional issues raised are tied to resentencing and they were also settled through the Supreme Court decisions cited above.
18. Orders accordingly.



**DELIVERED, DATED AND SIGNED AT EMBU HIGH COURT THIS 29<sup>TH</sup> DAY OF OCTOBER, 2025.**

**R. MWONGO**

**JUDGE**

Delivered in the presence of:

Applicant Present in Court

Ms. Nyika for the Respondent

Francis Munyao - Court Assistant

