



**Ongacho v Republic (Miscellaneous Criminal Application
E085 of 2025) [2025] KEHC 15823 (KLR) (22 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15823 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
MISCELLANEOUS CRIMINAL APPLICATION E085 OF 2025
MS SHARIFF, J
OCTOBER 22, 2025**

BETWEEN

JOSEPH MUNG'ONYE ONGACHO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant Joseph Mung'onye Ongacho was charged together with others not in this application of the offence of robbery with violence contrary to Section 295 as read with Section 296 (2) of the Penal Code Chapter 63 Laws of Kenya.
2. The particulars of the charge was that on the night of 22.11.2013 at about 10 p.m. while at Sikulu village, Kiminini sub-location in Bungoma North District (Sub county) within Bungoma County Jointly with others already before court, while armed with offensive weapons namely rungus and pangas, they robbed Dorcas Naboya Masakha of four male suits, thirty eight shirts, two jackets, one sweater, two radios make Sonytech and National, two solar lamps make Sunkin, two mobile handsets make Techno and Itel 2020, cash Ksh 200/- and assorted documents all valued at Ksh 80,000 and immediately before and/or immediately after the said robbery killed Henry Shitemi, the husband of the said Dorcas Naboya Masakha.
3. Upon conclusion of the trial, the Applicant and his then co-accused person were convicted and sentenced to death.
4. Subsequently, the Applicant filed an appeal in Bungoma HCCRA No. 197/2016 and the High Court allowed his appeal and remitted the case back to the trial court for resentencing. The trial court then re-sentenced the Appellant to a life sentence.
5. The Applicant was yet again aggrieved by the life sentence and he then preferred yet another appeal in Bungoma HCCRA No. E024 of 2022 whereat his sentence was reduced to 35 years in a judgement



delivered on 21.12.2022 by Justice Kemei, who duly took into account the provision of Section 333(2) of the Criminal Procedure Code.

6. The Applicant has brought the current application wherein he is craving for a review of his sentence to what he terms a less severe one.
7. I have considered the application and the affidavit in support thereof and I do note that this court already rendered itself twice, in the first instance it ordered for a resentencing and in the second instance it reduced the life sentence to a termed one of 35 years. This court is thus functus officio.
8. It cannot be lost of this court that the Applicant and his co-accused before the trial court had committed heinous offences of robbery with violence which resulted in the loss of life of one Henry Shitemi, the husband to Dorcas Naboya, the victim of the robbery with violence.
9. On the balance I do find that the application herein is devoid of merit and I thus dismiss it in its entirety.
10. This file is hereby marked as closed.

DELIVERED, SIGNED, AND DATED AT BUNGOMA THIS 22ND DAY OF OCTOBER, 2025.

MWANAISHA S. SHARIFF

JUDGE.

