



**Ogema alias Obara v Republic (Miscellaneous Criminal Application
E021 of 2025) [2025] KEHC 15256 (KLR) (17 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15256 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
MISCELLANEOUS CRIMINAL APPLICATION E021 OF 2025**

**WM MUSYOKA, J
OCTOBER 17, 2025**

BETWEEN

BONIFACE OGEMA ALIAS OBARA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant herein had been convicted, in Busia CMCCRC No. 1802 of 2013, of robbery with violence, contrary to section 295, as read with section 296(2), of the Penal Code, Cap 63, Laws of Kenya. He was sentenced to death. He filed an appeal, in Busia HCCRA No. 48 of 2015, against both conviction and sentence, which was dismissed. The death sentence was subsequently commuted to life imprisonment.
2. He has now come back, by the instant application, which is undated, seeking further review of sentence, on a number of grounds. He, apparently, did not file an appeal, at the Court of Appeal, against the dismissal of his appeal, in Busia HCCRA No. 48 of 2015.
3. I do not have jurisdiction to do that which he invites me to do. He should be pursuing parole and clemency under the exercise of the prerogative of mercy, which are only available from the Executive branch of government.
4. There has, in the recent past, been a flurry of such applications, fuelled by the decision in Francis Karioko Muruatetu & another vs. Republic [2017] eKLR (Maraga CJ&P, Mwilu DCJ&VP, Ojwang, Wanjala, Njoki & Lenaola, SCJJ), and others from the High Court and the Court of Appeal, which followed in its wake.
5. That run has since dried up, following the decisions of the Supreme Court, in Republic vs. Manyeso [2025] KESC 16 (KLR) (Mwilu, DCJ&VP, Ibrahim, Wanjala, Ndung'u & Lenaola, SCJJ), and Republic vs. Ayako [2025] KESC 20 (KLR)(Mwilu, DCJ&VP, Ibrahim, Wanjala, Ndung'u &



Lenaola, SCJJ), which have ruled that the sentences prescribed in various penal statutes, with respect to death, life imprisonment and statutory minimums, were lawful and constitutional.

6. Going by that, there would be no legal basis, for the High Court to intervene, post judgement and sentence, with a view to review sentence, as the High Court is pretty functus officio on the matter of sentence. The applicant ought to have appealed, against the decision of the High Court, if he was unhappy with it.
7. The result is that the application before me, which is undated, is without merit. I hereby dismiss it. This file shall be closed. The Deputy Registrar shall cause a certified copy of this ruling to be made available to the applicant, through the officer commanding the prison where he is being held. Orders accordingly.

DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, ON THIS 17TH DAY OF OCTOBER 2025.

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Mr. Boniface Ogema Oile alias Obara, the applicant, in person.

Advocates

Mr. Tony Onanda, instructed by the Director of Public Prosecutions, for the respondent.

