



**Wangoro & another v Republic (Petition E003 of 2023)
[2025] KEHC 14770 (KLR) (17 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 14770 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
PETITION E003 OF 2023
A MSHILA, J
OCTOBER 17, 2025**

BETWEEN

ROBERT WANGORO 1ST PETITIONER

DAVID WAFULA WANGA 2ND PETITIONER

AND

REPUBLIC RESPONDENT

JUDGMENT

1. This is an application for sentence review through a Constitutional Petition in which the Petitioners seek this Court to give them another chance in life. The Petitioners were tried and convicted on 23rd October, 2009 before the Githunguri Principal Magistrates Court, Criminal Case No.6 of 2007.
2. They were charged with the offence of Robbery with Violence c/s 296(2) of the Penal Code. They were convicted and sentenced to suffer the death penalty. In August 2019 both Petitioners sought for re-sentencing in accordance with the Supreme Court’s decision in Francis Muruatetu; The Court by a Ruling delivered on 23/10/2019 the Court declined to resentence them and upheld the trial court’s sentence being the death penalty; Dissatisfied with both the conviction and the sentence, the Petitioners filed for revision and re-instatement of the Order of the President commuting the death sentence to life imprisonment. Which application was allowed and on 6/10/2022 their life sentence was re-instated by the High Court vide Criminal Case No.E220 of 2021 at Kiambu.
3. The Petitioners were directed to file written submissions stating that life sentence was unconstitutional as it does not respect or protect the inherent dignity of a person contrary to Article 28 of *the Constitution*. A life sentence inflicts psychological torture contrary to Article 29(d) of *the Constitution*.



Issues For Determination

4. The sole issue for determination is whether this Court should review both Petitioner's life sentence.

Analysis

5. The applicable law is found under Article 165(3) of *the Constitution* which gives this Court the jurisdiction to determine cases where the rights and fundamental freedoms of citizens under the Bill of Rights have been violated. This jurisdiction in respect of resentencing is demonstrated in prevailing jurisprudence that the High Court may fix a definite period of imprisonment where a person has been imprisoned for life or the law prescribes life sentence. The Petitioner before approaching this Court must also have exhausted all the appellate processes; The Petitioner's appeals in the High Court Nairobi (CR.APP.NOS. 458 AND 459 OF 2009) and Court of Appeal sitting in Nairobi (CR.APP.NO.45 OF 2015) were found to have no merit and were all dismissed; the Petition is therefore rightly before this Court.
6. The appropriate sentence depends on the facts and the circumstances of the case. The Judiciary Sentencing Policy Guidelines lists the relevant factors in sentencing at page 15 paragraph 4.1 including the gravity of the offence, the threat of violence against the victim, the nature and type of weapon used by the Applicant to inflict harm.
7. In the instant case, PW1 and PW2 properly identified the Petitioners as there was sufficient light from the torches used by the attackers during the robbery; PW4 and PW5 testified that the Petitioners jointly with others were armed with pangas as they carried out the robbery; The prosecution produced evidence to demonstrate how the recovered items were found in the possession of the Petitioners; The elements of threat or force were not proved but the appellate courts were satisfied that at least two of the three key ingredients of the offence were proved to the required threshold and invoked the doctrine of recent possession in the recovery of the stolen items in their possession and this sealed their fate;
8. The circumstances of this case have been considered. The Petitioners did not make any submissions on them being remorseful and whether they had been rehabilitated during this period of incarceration. They only relied on and made reference to the emerging jurisprudence. The record indicates that they were sentenced to death because that is what is provided by the law. The sentence was later commuted to a life sentence by the President of the Republic of Kenya.
9. Life imprisonment should not mean the natural life of a convict. Such an indefinite sentence contravenes the right to human dignity and the right not to be subjected to inhuman and degrading treatment.
10. The imposition of an indeterminate life sentence, denies a convict the opportunity to be heard in mitigation and also denies them the benefit of parole whilst those facing lesser sentences are allowed to be heard in mitigation and are admitted to parole. This is an unjustifiable discrimination, unfair and repugnant to the principle of equality before the law under Article 27 of *the Constitution*.
11. For those reasons this Court is satisfied that the Petition has merit.

Findings And Determination

12. In light of the above reasoning this Court makes the following findings and determinations:-
 - i. This Court finds the Petition has merit and it is hereby allowed.



- ii. Both the Applicant's life sentences are found to be unconstitutional and are hereby substituted with a custodial sentence for a term of Forty (40) years each; to be calculated from the date of conviction being 23/10/2009.

Orders Accordingly.

DATED SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 17TH DAY OF OCTOBER, 2025.

A. MSHILA

JUDGE

In the presence of;

Sanja – Court Assistant

Uploaded in the presence of Court Assistant

