



REPUBLIC OF KENYA



KENYA LAW
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**Mwangi v Republic (Criminal Petition E001 of 2025)
[2025] KEHC 16447 (KLR) (14 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16447 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CRIMINAL PETITION E001 OF 2025
MA ODERO, J
NOVEMBER 14, 2025**

BETWEEN

SAMUEL MURIITHI MWANGI PETITIONER

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant herein Samuel Muriithi Mwangi has filed this undated petition seeking the following orders:-
 - “ 1. Spent.
 2. That, may the court be pleased to declare according to article 6(4), 14(5), of the International Covenant on Civil and Political Rights as read with article 2 (5) (6) of *the constitution* of Kenya every person has the right to apply for his/her sentence review.
 3. That, may the court be pleased to grant an order that will render review the review of my sentence to redress unfair trial in sentencing as due to the mandatory nature of sentencing under section 296 (2) of the penal code the trial magistrate’s court had no any other optional sentence hence the imposed sentence was not a judicial evaluated sentence.
 4. That, may the court be pleased to declare that the imposed sentence is inconsistent with Article 25 and 50 of *the constitution* as the relevant factors of consideration before sentencing were not meaningfully taken into account due to the mandatory nature of sentence imposition under the charges I faced.



5. That, no cost to this application as the applicant is a pauper and have no money.
2. The petition was supported by an affidavit sworn by the petitioner.
3. The petition was opposed by the ODPP who filed a Replying Affidavit dated 21st August 2025 sworn by Jennifer Kaniu, a Principal Prosecution Counsel.
4. The matter was canvassed by way of submissions. The petitioner filed undated submissions whilst the ODPP made oral submissions in open court.

Background

5. The petitioner herein was tried in the lower court on a charge of Robbery with Violence contrary to Section 296(2) of the Penal Code in Karatina Criminal Case No. 259 of 2010. The petitioner pleaded not guilty to the charge and the matter proceeded to full trial. Upon consideration of the testimonies of the witnesses and the evidence before the Court, the trial Court convicted him of the charge and sentenced him to death.
6. Being aggrieved with the conviction and sentence of the trial Court, the Petitioner instituted an Appeal at the High Court, namely, HCCR Appeal No. 95 of 2011 presided over by a two judge bench. The Appeal was heard and was dismissed on 26th April 2014.
7. Aggrieved by the finding of the High Court the Petitioner filed an appeal at the Court of Appeal No. 113 of 2014. The same was heard and dismissed on 9th November 2016. The death sentence imposed upon the petitioner was latter commuted to a life sentence by the Presidential decree in the year 2016. As it stands the petitioner has exhausted all avenues of Appeal save for the Supreme Court of Kenya.
8. This therefore is the background upon which the Petitioner has now approached this Court seeking for sentence review in accordance to Article 6(4), 14(5) of the International Covenant on Civil and Political Rights as read with Articles 2(5) (6), Articles 25 and Articles 50 of *the Constitution* of Kenya 2010.
9. The Petitioner stated that the death sentence imposed upon him was inconsistent with Articles 50 of *the Constitution* of Kenya 2010 of *the Constitution* due to the mandatory nature of the sentence. He prays that the court grant appropriate relief of a determinate sentence.
10. The Petitioner stated that he seeks the court's intervention in sentence only and relied on the Court of Appeal decision in William Okungu Kittiny VS Rep C.A 92018) eKLR, Stephen Karanja vs Rep, Misc. Cr App No. E094 of 2024 ECLR, Peter Muriithi Warui vs Republic HCCREV No. E0172 of 2024 and Miscellaneous Criminal No. 430 of 2015.
11. In mitigation the petitioner stated that he is remorseful for the crime and prays for forgiveness as at that at the time he was young and ignorant. He stated that he has since equipped himself with various skills learnt while in custody. That he is a first time offender and that the life sentence has disenfranchised him from future prospects. He further stated that at the time of incarceration he had not set up a family thus the lack of prospects of release is against the primary principle of a sentencing as per United Nations Standard minimum Standard Rules (Mandela Rule No. 4).
12. The Respondent filed a Replying Affidavit to the Petition and stated that the Petitioner had not met the constitutional threshold for consideration in Constitutional matter set out in the case of Anarita Karimi Njeru vs Republic (1979) eKLR.



13. It was submitted that having heard and dismissed the petitioner’s appeal against conviction and sentence the High Court is now ‘functus officio’ That under Article 164 of *the Constitution* the Court of Appeal is superior to the High Court. Therefore the Court of Appeal having dismissed the Petitioner’s appeal, the High court has no jurisdiction to re-open the matter.

Analysis And Determination

14. I have carefully considered the petition before this court, the reply filed thereto as well as the submissions of both parties.

15. In the case of Anarita Karimi Njeru v Republic 1979 eKLR where the court held as follows:-

“We would however, again stress that if a person in seeking redress from the High Court on a matter which involves a reference to *the Constitution*, it is important that (if only to ensure that justice is done to his case) that of which he complains, the provision said to be infringed and the manner in which they are alleged to be infringed.”

16. Further, Rule 4(1) of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (the “Mutunga Rules”) provide that:

“Where any right or fundamental freedom provided for in *the Constitution* is allegedly denied, violated or infringed or threatened, a person so affected or likely to be affected, may make an application to the High Court in accordance to these rules.”

17. Rule 10 of the “Mutunga Rules” governs the form that a constitution should take Rule 10(2) of the said Rules specifically provides as follows:

“(2) The petition shall disclose the following -

- a. The petitioner’s name and address;
- b. The facts relied upon;
- c. The constitutional provisions violated;
- d. The nature of injury caused or likely to be caused to the petitioner or the person in whose name the petitioner has instituted the suit, or in a public interest case to the public, class of persons or community;
- e. Details regarding any civil or criminal case, involving the petitioner or any of the petitioners, which is related to the matters in issue in the petition;
- f. The petition shall be signed by the petitioner or the advocate of
- g. The petitioner; and
- h. The relief sought by the petitioner.”

18. The petitioner has in his petition sought a declaration that the sentence imposed upon him ran afoul of Article 25 and 50 of *the Constitution*. He did not however elaborate how the above constitutional provisions were violated. Instead the petitioner proceeded to challenge the manner in which the



sentencing hearing was conducted and sought a review of his life sentence. Strictly speaking this petition cannot be said to have complied with the rules set out in the Anarita case.

19. However I do note that the Petitioner's is a layman and is acting in person. As such the court would allow him some leeway regarding strict adherence to procedure. Even so this petition does not pass muster for the following reasons.
20. As stated earlier having been convicted and sentenced in the Lower Court the Petitioner filed appeals to both the High Court and Court of Appeal. Both appeals were dismissed. The High Court dismissed his appeal vide the judgment dated 26th September 2014 whilst the Court of Appeal delivered its judgment on 9th November 2016. In both instances the Petitioner had appealed against conviction and Sentence. In both cases the appeals were dismissed 'in its entirety' meaning that the appeal against both conviction and sentence were dismissed.
21. In Kenya there is a clear hierarchy of Courts. The court of Appeal is superior to the High Court. Therefore the High Court having already heard and determined the petitioners appeal against conviction and sentence is now 'functus officio'. Secondly this court has no jurisdiction to entertain, reconsider and/or review a matter which has been determined by the court of appeal.
22. The petitioner sought to rely on the Muruatetu case as a basis for seeking to have his sentence reviewed.
23. The Supreme Court did clarify that their decision in the Muruatetu I case declaring the death sentence unconstitutional applied only to the mandatory death sentence for murder cases and did not apply to any other statutory mandatory death sentences or minimum sentences. In this case the petitioner had been convicted on a charge of Robbery with Violence.
24. Specifically, the Supreme Court issued the following guidelines

“Having considered all the foregoing, to obviate further delay and avoid confusion, we now issue these

guidelines to assist the courts below as follows -

 - i. The decision of Muruatetu and these guidelines apply only in respect to sentences of murder under section 203 and 204 of the Penal Code.
 - ii. The Judiciary Sentencing Policy Guidelines to be revised in tandem with the new jurisprudence enunciated in Muruatetu.
 - iii. All offenders who have been subject to the mandatory death penalty and desire to be heard on sentence will be entitled to re-sentencing hearing.
 - iv. Where an appeal is pending before the court of Appeal, the High Court will entertain an application for re-sentencing upon being satisfied that the appeal has been withdrawn. (emphasis my own)
25. The petitioner has no appeal pending before the court of appeal that has been withdrawn so as to pave the way for re-sentencing therefore this court cannot therefore entertain the petition. To do so would amount to usurping the hierarchical structure of our courts.
26. The Petitioner relied on the case of Shaban Salim Ramadhan 68 Others -vs- Attorney General & Another [2024] EKR in which the court found that the mandatory nature of the Death Penalty was unconstitutional and directed that the Petitioner be presented before the respective courts for resentencing.



27. Firstly the court in the Ramadhan case the Court directed that the Petitioners be presented before the original trial court (i.e the Magistrates Courts) for resentencing. Here the petitioner is seeking resentencing before the High Court which only heard his appeal.
28. Secondly the record indicates that following a Presidential directive in the year 2016 the death sentence which had been imposed upon the Petitioner was commuted to a sentence of life imprisonment. The petitioner no longer faces the death penalty thus his arguments regarding the constitutionality of that sentence are moot. Indeed the Death sentence which had initially been imposed upon the petitioner has already been reviewed through presidential decree. For the above reasons I find that the Ramadhan Case is distinguishable from the current petition, and is not applicable.
29. Finally I find no merit in this petition. The petitioner is merely seeking a review of sentence under the guise of a constitutional petition.
30. Indeed this Applicant has been bombarding the courts with one application after another Aside from his two appeals to the High Court and the Court of Appeal which were dismissed the same applicant also filed an application for review of sentence on 18th October 2024 which was dismissed by the court on 18th February 2025. The Applicant has become a vexatious litigant.
31. All present litigation must come to the end. This petition is frivolous vexatious and amounts to an abuse of court process. This petitioner has exhausted his avenues of appeal and his only option now is to petition the Power of Mercy Committee. This petition is dismissed in its entirety. No orders on costs.

DATED IN NYERI THIS 14TH DAY OF NOVEMBER 2025.

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MAUREEN A. ODERO

JUDGE

