REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KIBERA
CRIMINAL PETITION NO. E026 OF 2025

GEORGE SAUL REUBEN GATITA..... PETITIONER

VERSUS

REPUBLIC..... .....RESPONDENT

JUDGEMENT

1. The applicant was charged and after a full trial convicted for the offence of grievous harm contrary to section 234 of the Penal Code. He was sentenced to serve life imprisonment. His appeal before this court was dismissed by Kimaru J (as he then was) in Criminal Appeal No. 142 of 2014 on 23rd May 2018.
2. The petitioner has now approached this Court by way of a constitutional petition seeking an order for resentencing. He contends that the mandatory nature of the life sentence prescribed under section 234 of the Penal Code is unconstitutional. He states that he has exhausted all appeal avenues and now invokes sections 216 and 329 of the Criminal Procedure Code (Cap. 75, Laws of Kenya), urging the Court to consider his mitigation and substitute the life sentence with a definite term of imprisonment.
3. The issue for determination is whether the life sentence imposed upon the petitioner is unconstitutional in light of the recent pronouncements of the Supreme Court on mandatory and minimum sentences.
4. Article 50(2)(p) of the Constitution guarantees the right to benefit from the least severe punishment where sentencing law changes after conviction. Article 165(3)(b) grants the High Court

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jurisdiction to determine the constitutionality of any act or omission.

5. In 2016, the judiciary developed the Sentencing Guidelines as a response to the challenges experienced by judges and judicial officers. The Guidelines were developed pursuant to section 35(2) of the Judicial Service Act 2011. These guidelines recognised that sentencing is perhaps one of the most intricate aspects of the administration of trial justice. The guidelines collated the principles of law that should guide courts in the exercise of their discretion, so that sentences for analogous circumstances are delivered as transparently and consistently.
6. Since the formulation of the SPGs of 2016, the criminal justice landscape around sentencing has evolved significantly, prompting NCAJ to review (The Sentencing Policy Guidelines 2023) the Guidelines to align with the emerging jurisprudence, and make them more responsive to the justice needs of Kenyans. The revised SPGs provide guidance in sentencing where the mandatory minimum and maximum sentences are concerned, as well re sentencing hearings.
7. Consequently, the evolution of law and jurisprudence should grow in tandem with the Constitution while acknowledging the judiciary guidelines on sentencing.
8. It is equally my view that a sentence imposed on a convict has to meet the objectives of retribution, deterrence, rehabilitation, restorative justice, community protection and denunciation. Therefore, it is no longer necessary or desirable to hold a convict for an indeterminate amount of time as this does not meet the objectives of the sentencing policy guidelines.

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9. In this case, it appears that in determining the sentence, the learned trial magistrate's decision was primarily influenced by the mandatory nature of the applicable law. This jurisprudence has since shifted after the promulgation of the Constitution of Kenya, 2010.

10. Furthermore, it is significant to emphasize that indeterminate sentences deprive a convict of the opportunity to be heard in mitigation, while convicts facing lesser sentences are granted such an opportunity. The depravation constitutes unjustifiable discrimination, is unfair, and contravenes the principle of equality before the law as enshrined in Article 27 of the Constitution. Additionally, an indeterminate life sentence, amounts to inhumane treatment and violates the right to dignity under Article 28 of the Constitution. It is also a principle of international law that all prisoners serving life sentences should be afforded the possibility of rehabilitation and the prospect of release if such rehabilitation is achieved. (See the decisions of the European Court of Human Rights: **Vinter and others v. United Kingdom (Application nos. 66069/09, 130/10 and 3896/10) [2016] III ECHR 317 (9 July 2013)** and **Murray v. the Netherlands [GC], no. 10511/10, (26 April 2016)**

11. In the instant case, the appellant was charged with the offence of grievous harm contrary to section 234 of the Penal Code. He was sentenced to serve life imprisonment as per the law. The petitioner has now served fourteen (14) years imprisonment and seeks a definite term. A resentencing exercise thus falls within the law and applicable jurisprudence.

12. Having considered the petition, supporting grounds, mitigation, the time served, the gravity of the injuries inflicted,

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and the principles in the cited authorities, a determinate sentence is appropriate.

13. I hereby set aside the life sentence and substitute it with a sentence of forty (40) years' imprisonment. The sentence shall run from 26th April 2011 the date of petitioner's arrest, pursuant to section 333(2) of the Criminal Procedure Code.

Ruling dated and delivered virtually this 24th day of November 2025

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D. KAVEDZA
JUDGE

<u>In the presence of:</u>
Petitioner Present
Mutuma for the Respondent
Karimi Court Assistant.

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