REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. E003 OF 2025

ALEXANDER NGUGI NJERI…….. ……..PETITIONER

VERSUS

REPUBLIC……RESPONDENT

JUDGMENT

1. This is an application for sentence review through a Constitutional Petition in which the Petitioner seeks this Court to give him another chance in life. The Petitioner was tried and convicted on 23rd October, 2009 before the Kiambu Principal Magistrates Court, Criminal Case No.444 of 2006.
2. He was charged that while in the company of others not before the court for the offence of Robbery with Violence c/s 296(2) of the Penal Code. He was convicted and sentenced to suffer the death penalty. Dissatisfied with both the conviction and the sentence the Petitioner proffered appeals vide High Court Criminal Appeal No. 311 of 2006 and Court of Appeal Criminal Case No.4 of 2009. Both appeals were disallowed and both

appellate Courts upheld the trial court's sentence being the death penalty; By an Order of the President the death penalty was commuted to life imprisonment.

3. The Petitioner has now filed this instant Petition 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.
4. The parties were directed to canvas the Petition by way of filing and exchanging written submissions.

PETITIONER'S SUBMISSIONS

5. The petitioner submits that the High Court has jurisdiction to hear the instant Petition. Reliance was placed in the case of ***Owners of Motor Vessel "Lillian S" vs Caltex Oil Kenya Ltd (1989) KLR.*** The court was urged to conclude that the life sentence imposed is harsh, arbitrary and disregarded the spirit of discretion. He submitted that it is unfair that he cannot benefit from resentencing as others do as such should be reviewed to align with the Sentencing Policy guideline.

RESPONDENT'S SUBMISSIONS

6. The respondent submits that the petition is res judicata as the issues raised herein have been or ought to have been litigated before the trial court, the High Court and the Court of Appeal as such this court cannot sit on appeal. The petitioner was said to have exhausted all avenues of appeal. It was submitted that there is no violation of the petitioner's rights as life sentence is lawful and constitutionally permissible punishment for serious offences. That the petitioner's right to fair trial was not violated as the petitioner has had the benefit of three tiered judicial review and that the sentence imposed was within the law. Lastly, it was submitted that the petitioner has not presented mitigating circumstances, rehabilitative progress or specific prejudice to warrant review of sentence.

ISSUES FOR DETERMINATION

7. The sole issue framed for determination is whether this Court should review the Petitioner's life sentence.

ANALYSIS

8. The applicable law is found under Article 165(3) of the Constitution which gives this Court the jurisdiction to determine cases wh ere 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 Petitioners appeals in the High Court Nairobi (High Court Criminal Appeal No. 311 of 2006) and the Court of Appeal sitting in Nairobi (Criminal Case No.4 of 2009) were found to have no merit and were all dismissed; the Petition is therefore rightly before this Court.

9. 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.

10. In the instant case the facts are very straight forward, on the material day **PW1** the Complainant met up with **PW2** and **PW3** at Ndenderu Shopping Centre. **PW3** gave **PW1** the sum of Kshs.1000/- to take to **PW3's** home and they all parted company. On the way to execute the errand **PW1** was accosted

by the Petitioner and two (2) other people; **PW1's** evidence was that the Petitioner held him by the neck while the other two beat him up and robbed him of the Kshs.1000/- when the robbers saw members of the public approaching the scene they fled; PW1 gave chase and managed to apprehend and hold down the Petitioner whereas the other two managed to escape; the Petitioner was apprehended and taken to Rweno Police Post; the robbery took place in broad daylight and the Petitioner was properly identified as there was sufficient light. The prosecution produced evidence to demonstrate how the Petitioner was apprehended and the appellate courts were satisfied that at least two of the three key ingredients of the offence were proved to the required threshold and this sealed his fate;

11. The circumstances of this case have been considered. The Petitioner did not make any submissions on him being remorseful and whether he had been rehabilitated during this period of incarceration. He only relied on and made reference to the emerging jurisprudence. The record indicates that he was 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.

12. 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.

13. 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**.**

14. For those reasons this Court is satisfied that the Petition has merit.

FINDINGS AND DETERMINATION

15. 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) The Petitioner's life sentence is found to be unconstitutional and it is hereby substituted with a custodial sentence for a

term of Thirty (30) years; to be calculated from the date of conviction being 16/06/2009.

Orders Accordingly.

DATED SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 21ST DAY OF NOVEMBER, 2025.

A. MSHILA

JUDGE

In the presence of;

Sanja – Court Assistant

Gacharia – No appearance

Petitioner – No appearance

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