



REPUBLIC OF KENYA



**KENYA LAW**  
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**Obwoye v Republic (Petition E001 of 2025)  
[2025] KEHC 17138 (KLR) (24 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 17138 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BOMET  
PETITION E001 OF 2025  
JK NG'ARNG'AR, J  
NOVEMBER 24, 2025  
IN THE MATTER OF ARTICLES 19 (3A), 22 (1) (2B), 21 (1),  
20 (1) (2) (4Q) OF THE CONSTITUTION OF KENYA  
AND  
IN THE MATTER OF CONTRAVENTION OF FUNDAMENTAL  
RIGHTS AND FREEDOM OF INDIVIDUALS UNDER ARTICLES  
25 (A) (C), 27 (1) (2), 28 (A) (D) (F), 47, 48 AND ARTICLE 50  
(1) (2Q) OF THE CONSTITUTION OF KENYA  
AND  
ARTICLE 23 (1) AS READ WITH ARTICLE 165 OF THE  
CONSTITUTION OF KENYA  
AND  
IN THE MATTER OF SECTION 333 OF THE CRIMINAL  
PROCEDURE CODE  
AND  
BOMET HIGH COURT PETITION NO. E001 OF 2025 2  
IN THE MATTER OF THE HIGH COURT CRIMINAL APPEAL  
NUMBER E004 OF 2020 AT THE HIGH COURT IN BOMET  
AND  
IN THE ORIGINAL CASE BEING CRIMINAL CASE NUMBER 434  
OF 2010 AT THE MAGISTRATE'S COURT IN BOMET  
BETWEEN**



EZEKIEL OMBASO OBWOGE ..... PETITIONER

AND

REPUBLIC ..... RESPONDENT

## JUDGMENT

1. The Petitioner alongside others were charged with the offence of robbery with violence contrary to section 296 (2) of the Penal Code. The Petitioner faced an alternative charge of handling stolen property contrary to section 322 (2) of the Penal Code. The Petitioner was convicted for the offence of robbery with violence and was sentenced to death.
2. The Petitioner appealed his conviction and sentence in this court vide Criminal Appeal Number E004 of 2020. In its Judgement dated 1<sup>st</sup> August 2022, this court (Korir J.) upheld the Petitioner's conviction and sentence and dismissed his Appeal.
3. The Petitioner has again applied for resentencing through a Notice of Motion Application filed on 22<sup>nd</sup> August 2023. He states that the death sentence was declared unconstitutional and was thus serving an illegal sentence.

### The Petitioner's case

4. Through his Supporting Affidavit filed on the same date, the Petitioner stated that the Supreme Court had declared the mandatory death sentence unconstitutional. That on 20<sup>th</sup> October 2016, his death sentence was commuted to life imprisonment by the President. He relied on Articles 19, 20, 27, 28 and 50 of *akn ke act 2010 constitution the Constitution* and *Muruatetu & another v Republic; Katiba Institute & 5 others (Amicus Curiae) [2017] KESC 2 (KLR)*.
5. The Petitioner submitted that he had been in custody since 2011. That he had reformed, rehabilitated and was remorseful. That he had undertaken courses while in prison which have transformed his life. The Petitioner submitted that the death sentence did not abide by the values set by Articles 20, 28, 48 and 50 of *akn ke act 2010 constitution the Constitution* of Kenya. That the circumstances of the case did not warrant a death sentence.
6. It was the Petitioner's submission that his mitigation was not considered by the trial court. That the maximum sentence was intended for the worst offenders. It was the Petitioner's further submission that this court considers the period spent in custody before he was sentenced. He relied on section 333 (2) of the Penal Code and *Robert Mutashi Auda vs Republic (2018) eKLR*.

### Respondent's submissions

7. Through its written submissions dated 23<sup>rd</sup> June 2025, the Respondent submitted that the death sentence was provided for under section 296 (2) of the Penal Code. That at the time the mandatory nature of the death sentence had been declared unconstitutional, the Petitioner had already been sentenced.
8. It was the Respondent's submission that the Petitioner was charged, convicted and sentenced in the Magistrate's Court. That he appealed to this court and his conviction and sentence was upheld. It was the Respondent's further submission that if the Petitioner was dissatisfied with this court's decision, he should have appealed to the Court of Appeal. That this court was functus officio.



## Analysis

9. As stated earlier in this Ruling, the Petitioner was convicted and sentenced to death by the Magistrate's court for the offence of robbery with violence. The Petitioner appealed to this court challenging his conviction and sentence. The conviction and sentence were upheld by this court through Its Judgement dated 1<sup>st</sup> August 2022. It is my view that once this court upheld the Petitioner's sentence, it became functus officio and thus the Petitioner's recourse lay with the Court of Appeal. In *Elishipha Muthoni v Republic* [2022] KEHC 1410 (KLR) Chepkwony J. held: -

“The law abhors that practice of a Judge sitting to review a Judgment or decision of another Judge of concurrent jurisdiction. This is because the rule of the thumb is that courts cannot sit in review appeal over decisions of their peers of equal and competent jurisdiction much less those courts of higher Jurisdiction than theirs.

The court which ought to deal with an issue arising out of the decision of this court is the Court of Appeal as it is the one with jurisdiction under Article 164(3) of *akn ke act 2010 constitution the Constitution* and Section 379(1) of the Criminal Procedure Code. This is in appreciating the provisions of Article 50(2) (q) of *akn ke act 2010 constitution the Constitution* of Kenya, 2010 which guarantees the right of a person if convicted, to appeal to, or apply for review by, a higher court as prescribed by the law.”

10. Further, in *Lawrence Kariuki Njeru v Republic* [2021] KEHC 6118 (KLR), Njuguna J. held: -

“..... Further this court is bereft of jurisdiction to review the said judgment as doing so would be tantamount to sitting as an Appellate court on the judgment of the Learned Judge and which act the law abhors.

The petitioner ought to ventilate the issue on the resentencing and or excessive sentence at the Court of Appeal.....”

11. In the end, I find that this court has no jurisdiction to review the Petitioner's sentence and therefore the Petition lacks merit and is dismissed.

**JUDGEMENT DELIVERED, DATED AND SIGNED AT BOMET THIS 24<sup>TH</sup>**

**DAY OF NOVEMBER, 2025.**

..... .

**HON. JULIUS K. NG'ARNG'AR**

**JUDGE**

Judgement delivered in the presence of:

Siele Susan (Court Assistants)

Petitioner: Present in person

Koech for the Respondent

