

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT EMBU**  
**(CORAM: R. MWONGO, J.)**  
**CRIMINAL CONSTITUTIONAL PETITION NO. E002 OF 2025**

**IN THE MATTER OF ARTICLES 2 (1) (6), 3 (1), 10 (2) (b), 19, 22 (1), 25 (a), 27  
(1), (2), (4), 28, 29 (a), (d) and (f), 50, 159 (2) (a), 165 (3) (b) (d) OF THE  
CONSTITUTION**

**AND**

**IN THE MATTER OF SECTION 216 & 326 OF THE CRIMINAL PROCEDURE  
CODE**

**AND**

**IN THE MATTER OF SECTION 296 (2) OF THE PENAL CODE**

**BETWEEN**

**DAVID FUNDI MUTHUVI.....APPLICANT**

**-VERSUS-**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

**The Petition**

1. Through a constitutional petition dated 31<sup>st</sup> March 2025, the applicant is seeking rehearing of mitigation and consequently, resentencing based on the argument that the life imprisonment sentence he is facing is discriminatory and violates the tenets of the Constitution. He has sought the following orders:

- a) This Hon. Court be pleased to issue a declaration that indeterminate sentence of life imprisonment is unconstitutional in so far as it violates Articles 28 and 29(d) of the Constitution by failing to give regard to not only his dignity as human beings but also failing to prevent their subjection to inhuman and degrading treatment;
- b) This this Court be pleased to issue a declaration that indeterminate sentences of life imprisonment is unconstitutional in so far as they violate on the inherent right to a fair trial as envisaged under Article 50 of the Constitution;

- c) This Court be pleased to issue a declaration that indeterminate sentences of life imprisonment are unconstitutional in so far as they violate Article 2 (5) and (6) of the Constitution through their noncompliance with international laws and Instruments in which Kenya is a party to through its ratification;
  - d) This Court be pleased to issue a declaration that indeterminate sentences of life imprisonment is unconstitutional in so far as it violates the objectives of sentencing as stipulated under the Judiciary Sentencing Guidelines;
  - e) This Court be pleased to issue a declaration that indeterminate sentences of life imprisonment is unconstitutional in so far as it violates Article 27 of the Constitution owing to lack of legislation catering for remission and or Parole;
  - f) This Court be pleased to review the Sentence of Life to a lenient sentence putting into account that he has been in prison since date of Arrest 28<sup>th</sup> November 2014 as envisaged under Section 333 (2) of the Criminal procedure Code; and
  - g) The Court be pleased to make further such other order(s) as it shall deem just.
2. The petitioner referred to his rights as provided for under Article 50 of the Constitution and as interpreted by the courts in the cases of **Ouma v Republic [2021] KEHC 13707 (KLR)**, **Vinter and Others v. the United Kingdom [GC] - 66069/09, 130/10 and 3896/10**, **László Magyar v. Hungary (Application no. 73593/10)** and **Muruatetu & another v Republic; Katiba Institute & 5 others (Amicus Curiae) [2017] KESC 2 (KLR) (Muruatetu 1)**. He argued that his rights under the constitution have been violated and he specified the constitutional provisions he alluded to.
3. He stated that the indeterminate nature of the life imprisonment sentence is discriminatory and offends the Constitution as it takes away the dignity of a person. That it perpetrates unequal treatment of persons yet Article 50(1)(2)(q) of the Constitution affords him the right to review of his sentence and to benefit from the least available punishment. That it is inhumane and it even contravenes Article 10 of

the ICCPR and Article 10 of the United Nations Standard Minimum Rules for the treatment of Prisoners (Mandela Rules).

## **Background**

4. The applicant was convicted of the offence of defilement in Siakago MCSO No. 1112 of 2014. He was sentenced to life imprisonment. His appeal against the decision of the trial court in Embu HCCRA 38 of 2017 was dismissed. He stated that he has been in custody since the date of his arrest on 28<sup>th</sup> November 2014 and would like the court to reconsider his sentence since he has undergone several rehabilitation programs.
5. Before this petition, the petitioner had filed Embu HC Misc. Application no. E060 of 2024 seeking sentence review. The application was struck out, the Judge stating that the court did not have jurisdiction to entertain the application.

## **Grounds of Opposition**

6. The respondent filed grounds of opposition stating the court cannot use its discretion to alter a sentence that was imposed by the law. That the only organ that can alter sentences prescribed in law is Parliament as the law-making branch of government. It stated that on this basis, the court lacks jurisdiction to determine the application.

## **Parties' submissions on the application**

7. The application was canvassed by way of written submissions.
8. The applicant submitted that the life imprisonment sentence is punitive and inhumane. He relied on sections 215 and 329 of the Criminal Procedure Code and the cases of **Arthur Muya Muriuki v Republic [2010] KEHC 1622 (KLR)**, **Vinter and Others v. the United Kingdom [GC] - 66069/09, 130/10 and 3896/10** and **S v Jansen (480/87) [1988] ZASCA 68; [1989] 3 All SA 439**. He argued that the sentence disregards his right to dignity and it should be reviewed.
9. On its part, the respondent submitted that the life imprisonment sentence imposed is a mandatory one prescribed by statute and the court cannot change it as it lacks jurisdiction to do so. It relied on Articles 23(1), 94(1) and 165(a&b) of the Constitution and the cases of **Jasbir Singh Rai & 3 Others v Tarlochan Singh Rai & 4 others [2007] KECA 21 (KLR)**, **Jackson Maina Wangui v Republic [2012] KEHC 3013 (KLR)**, **Igiro v Republic [2023] KECA 926 (KLR)** and

**Lawrence v Republic [2021] KECA 172 (KLR)**. It argued that the law has not been amended to enable sentence review.

### **Issues for Determination**

10. The issues for determination are:

- 1) Whether the court has jurisdiction to entertain the application/petition; and
- 2) Whether the sentence should be reviewed.

### **Analysis and Determination**

11. The petition herein raises questions of interpretation of the bill of rights under the constitution. It is, therefore, rightly before this court because the High Court has exclusive jurisdiction under Article 165(3) of the Constitution to determine cases where the rights and fundamental freedoms of citizens under the Bill of Rights have been or threaten to be violated. To that extent, the court has jurisdiction.

12. In considering whether or not resentencing may be allowed, it is noted that the constitutional violations alleged by the petitioner/applicant have been addressed by superior courts in previous decisions. In **Manyeso v Republic [2023] KECA 827 (KLR)**, the Court of Appeal took the view that the indeterminate nature of the life imprisonment sentence is discriminatory. That court went on to define life imprisonment to mean 40 years imprisonment. The same court in the case of **Ayako v Republic [2023] KECA 1563 (KLR)** determined life imprisonment to mean 35 years imprisonment.

13. However, these 2 decisions were overturned by the Supreme Court in **Republic v Ayako [2025] KESC 20 (KLR)** and **Republic v Manyeso [2025] KESC 16 (KLR)**. In its decisions in these 2 cases, the Supreme Court stated that the role of the court is limited to interpretation of the law and it does not extend to altering sentences already imposed in law. The court stated that law review is a preserve of the legislature and that the sentences provided under statute should be applied as they are without alteration. In essence, the Apex Court declined the argument on unconstitutionality of the life imprisonment sentence.

14. On the basis of this jurisprudence, there is no room to review the life imprisonment sentence, or vary or amend the sentence that the applicant is serving, given the constraints of written law and the assertion that only Parliament can re-write law.

The petitioner's rights cannot be held to have been violated through the sentence imposed by the trial court and upheld by the first appellate court.

**Disposition**

15. In light of the foregoing discussion, the application lacks merit and it is hereby dismissed. The constitutional issues raised being so intertwined to re-sentencing were also settled through the Supreme Court decisions cited herein.

16. The application is therefore dismissed.

**Delivered, dated and signed at Embu High Court this 26<sup>th</sup> day of November, 2025.**

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**R. MWONGO  
JUDGE**

**Delivered in the presence of:**

1. Applicant Present at Kamiti Maximum Prison
2. Ms. Nyika for the Respondent
3. Francis Munyao - Court Assistant