

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT ISIOLO**  
**CRIMINAL REVISION NO. E019 OF 2025**

**JOHN**

**MURITHI.....**  
**.....APPLICANT**

**VERSUS**

**REPUBLIC .....**  
**..... RESPONDENT**

**RULING**

1. The Applicant herein was charged at the Isiolo Magistrate’s Court with the offence of Robbery with Violence. At the conclusion of the trial ,he was convicted and sentenced to suffer death. He has told the court that , he moved the High Court in Meru, on appeal under Meru High Court Criminal Appeal Number 162 of 2010 which Appeal was dismissed.
2. He has filed the present Application praying that in line with the directions of the Supreme Court in **Muruatetu 2 (Muruatetu & another v Republic (2021) KESC 31 (KLR))** that his sentence be reviewed.
3. The directions on **Muruatetu 2** (supra) were as follows: *“To clear the confusion that exists with regard to the mandatory death sentence in offences other than murder, we direct in respect of other capital offences such as treason under Section 40 (3), robbery with violence under Section 296 (2), and attempted robbery with violence under Section 297 (2) of the Penal Code, that a challenge on the*

*constitutional validity of the mandatory death penalty in such cases should be properly filed, presented, and fully argued before the High Court and escalated to the Court of Appeal, if necessary, at which a similar outcome as that in this case may be reached. Muruatetu as it now stands cannot directly be applicable to those cases.”*

**4.** However, whereas it is true that the Applicant was sentenced to death , at the time of filing this application, he was not longer under the said sentence . The death sentence had been commuted to Life Imprisonment in respect of all convicts who were under death sentence as at 21.11.2022. This was done through a gazette Notice No. 9566 of 19/7/2023 and published on 21/7/2023 The Notice stated as follows: *“it is notified for the general information of the public that in exercise of the powers conferred by Article 133 of the Constitution of Kenya and Section 23(1) of the Power of Mercy Act 2011 the President and the Commander - in - Chief of the Defence Forces of the Republic of Kenya, upon Recommendation of the Advisory committee on the Power of Mercy committed the death sentence imposed on every capital offender as at 21.11.2022 to a Life Sentence.”*

**5.** In publishing the Notice the President was exercising the power of mercy, bestowed upon him by Article 133 of the Constitution.

**6.** I have perused the lower court file and have established that the Applicant herein was sentenced on 18.5.2011. Thus the Applicant sentence was

commuted to life imprisonment, as it is evident that he was among those who were under the penalty of death as at 21.11. 2022.

7. In the circumstance the Applicant's prayer is moot. It has been overtaken by events, as the Applicant is no longer under Death Sentence. Consequently the application is hereby struck off .

Dated, signed and delivered, at Isiolo this 3<sup>rd</sup> day of December 2025.

S. Chirchir

Judge .

In the presence of :

Roba Katelo- court Assistant.

The Applicant

Mr. Ngetich for the Respondent