

**IN THE COURT OF
APPEAL AT NAKURU**

**(CORAM: WARSAME, MATIVO GACHOKA,
JJ.A) CRIMINAL APPEAL NO. E009 OF 2023**

BETWEEN

ROBERT KARIUKI CHEGE.....APPELLANT

AND

REPUBLIC.....RESPONDENT

*(Being an appeal from the Judgment of the High Court of
Kenya at Naivasha (Hon. Lady Justice M.A. Odero & Hon.
Lady Justice
C. Meoli, JJ) dated 6th November 2015)*

in

H.C.CR.A NO. 7 OF 2014)

**JUDGMENT OF THE
COURT**

1. The appellant was charged with the offence of Robbery with Violence contrary to Section 296(2) of the Penal Code. The particulars of the offence were that on 2nd January 2011 at Narok Township within Narok County, jointly with others not before the court and while armed with a Maasai sword and rungus, he robbed Richard Nyachoyo Onyiengo of a Sony Ericsson mobile phone, an Omax wrist watch, a National Identity Card, and cash Kshs. 3,450/=, and at or

immediately

before or immediately after the time of such robbery used actual violence to the said Richard Nyachoyo Onyiengo.

2. Upon his conviction and sentence to death, he appealed to the High Court wherein his appeal was dismissed by Odero and Meoli, JJ. on 6th November 2015 and both the conviction and sentence were upheld.
3. Still dissatisfied, the appellant has preferred this second appeal to this Court. When the appeal came up for hearing before us on 9th December 2025, Mr. Ochieng, learned counsel for the appellant, informed the Court that the appeal was against sentence only and relied on written submissions dated 17th June 2025 in support thereof.
4. The appellant submits that the sentence of death imposed by the trial court and confirmed by the High Court was not only harsh but unconstitutional. He relies principally on the decision of the Supreme Court in **Francis Karioko Muruatetu & another v Republic; Katiba Institute & 5 others (Amicus Curiae) [2017] eKLR, Petition 15 & 16 of 2015 (Consolidated)**.

5. The Appellant submits that in Muruatetu, the Supreme Court declared mandatory minimum sentences prescribed by the Penal Code to be unconstitutional. He argues that the death sentence violates his constitutional rights under Article 50(2) of the Constitution, particularly the right to have his sentence reviewed by a higher court.
6. The appellant contends that maximum statutory sentences, should be reserved only for the most heinous of crimes. He argues that sentencing should feature retributory and reformatory aims, not merely deterrence, and that an excessive sentence is unlikely to meet the main objective of correcting offenders.
7. Mr. Omutelema, learned counsel for the respondent, opposed the appeal and urged the Court to dismiss it. Relying on written submissions dated 26th May 2025, it was submitted that a court hearing a criminal case has discretion in sentencing and must consider the circumstances of the case and that there were aggravating factors in this case justifying the imposition of a severe sentence including that the appellant was in the company of others during the

commission of the robbery; the

appellant and his companions were armed with lethal weapons, including a metal bar; they used actual violence; part of the stolen property was never recovered and the appellant was not remorseful.

8. The sole issue for our determination is whether the sentence of death imposed on the appellant can stand in light of current jurisprudence.
9. In Muruatetu & another v Republic; Katiba Institute & 5 others (Amicus Curiae) [2021] KESC 31 (KLR) (Muruatetu Directions), the Supreme Court stated thus;

'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.'

10. In **Republic v Mwangi; Initiative for Strategic Litigation in Africa (ISLA) & 3 others (Amicus Curiae)** [2024] KESC 34 (KLR) the Supreme Court

comprehensively

addressed the scope and application of its earlier decision in Muruatetu(supra). Critically, the Court made it abundantly clear that the Muruatetu decision applied only to the offence of murder under Section 204 of the Penal Code, and did not extend to other capital offences. The Court stated thus:

"10. It has been argued in justifying this state of affairs, that, [48] section 204 of the Penal Code deprives the court of the us

"Reading this paragraph and the Judgment as a whole, at no point is reference made to any provision of any other statute. The reference throughout the Judgment is only made to section 204 of the Penal Code and it is the mandatory nature of death sentence under that section that was said to deprive the 'courts of their legitimate jurisdiction to exercise

discretion not to impose the death sentence in appropriate cases'

11. The implications of this clarification directly dispose the present appeal. The mandatory death sentence for robbery with violence under Section 296(2) remains valid and there is no legal basis for this Court to interfere with the sentence imposed.
12. In the result, we find no merit in this appeal. The appeal against sentence is hereby dismissed. The sentence of death imposed by the trial court on 10th February 2012 and confirmed by the High Court on 6th November 2015 is hereby affirmed.
13. It is so ordered.

Dated and delivered at Nakuru this 11th day of December, 2025.

M. WARSAME

.....
**JUDGE OF
APPEAL**

J. MATIVO

.....
**JUDGE OF
APPEAL**

M. GACHOKA CIARB., FCIARB

.....
JUDGE OF APPEAL

*I certify that this is a
true copy of the original.*

Signed.

DEPUTY REGISTRAR