Eravuna v Republic (Criminal Miscellaneous Application E027 of 2025)
[2025] KEHC 18822 (KLR) (18 December 2025) (Ruling)

Neutral citation: [2025] KEHC 18822 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT VIHIGA

CRIMINAL MISCELLANEOUS APPLICATION E027 OF 2025

JN KAMAU, J

DECEMBER 18, 2025

BETWEEN

DOUGLAS AMBASI ERAVUNA ..... APPLICANT

AND

REPUBLIC ..... RESPONDENT

RULING

Introduction

1. The Applicant herein was charged with the offence of robbery with violence contrary to Section 296(2) of the Penal Code. He was convicted and sentenced to death.

2. Being aggrieved by the said decision, he lodged first appeal at Kakamega HCCRA No 187 of 2013. The court dismissed his appeal and upheld his conviction and sentence.

3. Being aggrieved by the said decision, he lodged a second appeal at Kisumu Criminal Appeal No 9 of 2018. The court dismissed his appeal and upheld his conviction and sentence.

4. On 23rd April 2025, he filed this Notice of Motion application dated 17th April 2025 seeking review of his sentence. He invoked Articles 50 (2)(c) and 165 of *the Constitution* of Kenya, 2010 and Sections 216 and 329 of the Criminal Procedure Code Cap 75 (Laws of Kenya) and relied on the cases of Constitutional Petition No E002 of 2024 and Petition No E003 of 2024 and Oprodi Peter Omukanga vs Republic Criminal Appeal No 260 of 2019 (both eKLR citations not given).

5. He further asserted that he was reformed, rehabilitated, remorseful and a first-offender. He sought for a lenient sentence and urged the court to consider Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya)

6. His Written Submissions were dated and filed on 25th June 2025. The Respondent did not filed any Written Submissions. The Judgment herein is therefore based on the said Applicant's Written Submissions only.

Legal Analysis

7. The Applicant submitted that he was a first offender and remorseful of the offence he ignorantly committed. He sought for a second chance claiming that he was not aware of the consequences of crime at the time of the commission of the offence but that his long incarceration had taught him the consequences of crime.

8. He pointed out that he had been living peacefully with his fellow inmates and prison authorities while engaging himself in various rehabilitation programs such as Diploma in Biblical Studies, Certificate in Biblical Studies in Prisoner's Journey and the gospel faith messenger ministry from which he said he had acquired completion certificates. He believed that the acquired knowledge and skills would enable him reintegrate well back into the society and live a self-supportive life as a law-abiding citizen.

9. He promised not to indulge in crime again and pleaded with the court to have mercy on him and substitute his death penalty with a lenient sentence in conformity with the decision in the case of George Munyinyi Kihuyu vs Daniel Gichimu Githinji & Another vs Republic (eKLR citation not given).

10. He further stated that during his arrest, he was thirty-one (31) years old and had not laid down a family foundation. He contended that his long incarceration without any prospect of release would ruin most of his life contrary to primary purpose of sentences of imprisonment as prescribed in the United Nation Minimum Standard Rules (Mandela Rules No 4) and our correctional services motto of "kurekebisha kwa haki" as well.

11. He pleaded with court to be lenient on him as man was to err and that it did not mean that since one had committed a crime, he/she should be judged for a lifetime. He urged the court to consider Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya) while reviewing his sentence.

12. In the case of Mbugua & 6 Others vs Attorney General & 3 Others (Constitutional Petition E002 & E003 of 2024 (Consolidated)) [2025] KEHC 1248 (KLR) (24 February 2025) (Judgment), this very court held that it was discriminatory to deny offenders who had been convicted of the offence of robbery with violence and attempted robbery with violence the right to have their mitigation during trial considered, while the non-capital offenders enjoyed that right.

    1. It recognised that under Article 27(1) of *the Constitution* of Kenya, persons who had been convicted for robbery with violence and attempted robbery with violence were also equal before the law, they had a right to be protected before the law and had to derive equal benefit from the law as the non- capital offenders.

    2. The court's decision was in line with the directions of the Supreme Court on 6th July 2021 in Francis Karioko Muruatetu and Another vs Republic [2017] eKLR (commonly now known as Muruatetu II) that the question of constitutionality of the death sentence in robbery with violence cases ought to commence at the High Court and thereafter escalated to the Court of Appeal, if necessary. It rendered itself as follows:-

        > " 46. 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 (emphasis court)."

15. In the case of Ramadhan & 8 others v General & another (Petition 5 of 2022 & Constitutional Petition 6 of 2022 (Consolidated)) [2024] KEHC 1173 (KLR) (6 February 2024) (Judgment), Sewe J looked at the mandatory nature of the death sentence under Section 296(2) and 296(2) of the Penal Code and declared it unconstitutional. She further directed that the petitioners be presented before the respective sentencing courts for sentence re-hearing upon appropriate applications

16. In the case of Mbugua & 6 Others vs The Hon Attorney General (Supra) as consolidated with Alfred Eyase Kinamundu & 2 Others vs the Hon Attorney General & Others (Supra), this court looked at the aspect of re-sentencing of persons who had been convicted under Section 296(2) and Section 297(2) of the Penal Code and rendered itself as follows:-

> " 67. The purpose of incarceration is rehabilitation and reformation of prisoners. It was psychological torture for a prison to take numerous courses to improve himself or herself in prison but never use those skills in the society. Indeed, learning of skills had the purpose of easing the integration of prisoners back into the society. Life imprisonment denied convicts who were on life sentence hope for a better future. It was discriminatory that all convicts had hope of going home other than those who had been convicted of the offence of robbery with violence and attempted robbery with violence. There had to be a determinate period within which a person had to atone for their sins.

68. The long indeterminate incarceration while undergoing rehabilitation programs without the prospect of being released was in the considered opinion of this court a blatant violation of the Petitioners' right to dignity contrary to Article 28 of *the Constitution* of Kenya....

86. For those who had been convicted and did not have the benefit of mitigating before being sentenced such as the Petitioners herein, they had a reprieve in Article 50(2) of *the Constitution* of Kenya which sets out some of the principles that were considered to constitute fair trial. One of these principles was the right to lodge an appeal or apply for review in a higher court, if convicted as stipulated in Article 50 (2) (q)) of *the Constitution* of Kenya.

87. Such mitigation, which would include the behaviour while in prison and proof of reformation and possibility of reintegration in the society which would enable an appellate and/or review court have a holistic view of the case. During appeal or review of a case, a higher court would have had all the facts and circumstances of the accused on record to enable it assess the appropriate sentence in case there was merit for a sentence reduction."

17. In this regard, it found that applicants seeking re-sentencing ought to file documents to support their mitigating factors. These documents could include certificates of programmes they had undergone in prison leading to their rehabilitation and recommendation letters from the In-charges of prisons.

18. While considering the present application for re-sentencing, this court was alive to the fact that the Court of Appeal upheld the death sentence that was meted out against the Applicant herein. It was the mandatory nature of the death sentence that this court found to have been unconstitutional and found that persons who had been convicted for the offence of robbery with violence and attempted robbery ought to be allowed to mitigate and be re-sentenced.

19. This court noted that appellants who included Francis Karioko Muruatetu in the Court of Appeal case of Gachanja & 7 Others (Criminal Appeal 51 of 2004) [2011] KECA 402 (KLR) (20 May 2011) Judgment were re-sentenced by the High Court on 16th December 2019 in Misc Criminal No 394 of 2017 consolidated with Misc Criminal Applications Nos 614, 28, 560, 589, 590 and 586 of 2018.

20. In the same vein, as the Court of Appeal had not yet dealt with the constitutionality of the mandatory nature of death sentence in respect of the Applicant herein, this court therefore found and held that it would not be violating the doctrine of stare decisis if it determined that it could allow the Applicant to mitigate and then re-sentence him in line with the case of Mbugua & 6 Others vs The Hon Attorney General (Supra) as consolidated with Alfred Eyase Kinamundu & 2 Others vs the Hon Attorney General & Others (Supra) and Ramadhan & 8 others v General & another (Supra) despite the Court of Appeal having upheld his death sentence on appeal.

21. In this regard therefore, it recognised that as it had both original and appellate jurisdiction to hear criminal and civil cases as provided in Article 165(3)(a) of *the Constitution* of Kenya and further it could review the decision of the lower court as provided under Article 50 (2) (q) of *the Constitution* of Kenya, it did not have to send the lower court file back to the lower court for re-sentencing.

22. To avoid further delays in this matter, this court found it prudent to consider the mitigation and re-sentencing of the Applicant herein as it already had the records.

Disposition

23. For the foregoing reasons, the upshot of this court's decision was that the Applicant's Notice of Motion application that was dated 17th April 2025 and filed on 23rd April 2025 was merited and the same be and is hereby allowed in the following terms:-

    a. That the Applicant be and is hereby directed to appear before this court for mitigation and sentencing on 18th December 2026.

24. It is so ordered.

DATED AND DELIVERED AT VIHIGA THIS 18TH DAY OF DECEMBER 2025

J. KAMAU

JUDGE