



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYAMIRA

CHERERE-J

HCCHRPET E001 OF 2025

BETWEEN

FRED ONDIEKI MAGOMA

PETITIONER

AND

REPUBLIC

..... RESPONDENT

RULING

- 1) Before the Court is an undated Petition, inviting this Court to revisit and interfere with the sentence he is currently serving following his conviction for the offence of robbery with violence contrary to section 296(2) of the Penal Code.
- 2) The Petitioner's criminal process is not in dispute. He was tried and convicted by the Senior Resident Magistrate's Court at Keroka in Criminal Case No. 273 of 2006 and sentenced to death. His appeal to the High Court at Kisii in High Court Criminal Appeal No. 156 of 2006 was dismissed. A further appeal to the Court of Appeal in Criminal Appeal No. 20 of 2008 (Kisumu) resulted in the conviction being upheld, with the sentence of death set

aside and substituted with a sentence of life imprisonment, which sentence the Petitioner is presently serving.

- 3) Subsequently, the Petitioner approached this Court by way of Nyamira Criminal Petition E090 of 2024, seeking re-sentencing and it was dismissed, the Court declining jurisdiction to revisit a sentence imposed by the Court of Appeal.
- 4) The present Petition raises, in substance, the same grievance and seeks the same relief previously declined. It invites this Court to re-open sentencing notwithstanding a final determination by the Court of Appeal and a prior rejection of re-sentencing by this Court.
- 5) The Respondent opposed the Petition on the ground that the Court is functus officio.
- 6) It is trite that this Court's jurisdiction does not extend to the review, variation, or re-sentencing of a sentence imposed by the Court of Appeal. The High Court exercises neither supervisory nor appellate authority over a superior court of record and cannot sit in judgment over its decisions.

7) Once the Court of Appeal pronounced itself on sentence, and this Court subsequently declined re-sentencing in Nyamira Criminal Petition E090 of 2024, the matter was conclusively settled. This Court is functus officio.

8) In my considered view, the present application amounts to a collateral and repetitive attempt to re-litigate an issue already finally determined. The invocation of the same jurisprudential basis previously rejected does not clothe this Court with jurisdiction and constitutes an abuse of the court process and offends the principle of finality in litigation.

DISPOSITION

9. For the foregoing reasons, the Court finds that:

- 1) It lacks jurisdiction to entertain the application
- 2) The Petition is an abuse of the court process
- 3) The Petition is dismissed

**DELIVERED AT NYAMIRA THIS 21st DAY OF
January 2026**



WAMAE.T. W. CHERERE
JUDGE

Appearances

Court Assistant - Hilda

Petitioner - Present

For the DPP - Mr. Chirchir (SADPP)