



**Mukara v Republic (Criminal Miscellaneous Application  
E029 of 2024) [2026] KEHC 2110 (KLR) (20 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 2110 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
CRIMINAL MISCELLANEOUS APPLICATION E029 OF 2024**

**REA OUGO, J**

**FEBRUARY 20, 2026**

**IN THE MATTER OF ENFORCEMENT OF THE BILL OF RIGHTS UNDER  
ARTICLE 20 (1) (2)(4) 21(1) 22(1) 23(1) 48,165 (3) (A) (B) (D) (1) (II), 25 (D) 51(2)  
258 AND 259 OF THE CONSTITUTION AND SECTION 327 (2),346,362 AND  
364 OF THE CRIMINAL PROCEDURE CODE (CAP 75) LAWS OF KENYA**

**AND**

**IN THE MATTER OF: ARTICLE 6 (4),14(5), OF THE INTERNATIONAL  
COVENANT ON CIVIL AND POLITICAL RIGHTS AS READ  
WITH ARTICLE 2 (5) (6) OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF CONTRAVENTION OF FUNDAMENTAL  
RIGHTS AND FREEDOMS UNDER ARTICLE 25 (C), 27 (1) (2)  
28, 29,(F) 47 50 (2) (P) AND 51 (1) OF THE CONSTITUTION**

**AND SECTION 216,329,333 (2) OF THE CRIMINAL  
PROCEDURE CODE (CAP 75 ) LAWS OF KENYA**

**AND**

**IN THE MATTER OF CRIMINAL CASE NO. 1564 OF 2009 AT CM'S COURT, AT BUNGOMA  
AND HCCR. APP. NO. 122 OF 2010 AT BUNGOMA AND COURT OF APPEAL CR. APPEAL**

**NO. 204 OF 2011 AT ELDORET.**

**BETWEEN**

**GODFREY JUMA MUKARA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**



## RULING

1. Godfrey Juma Mukaka, hereinafter referred to as the Applicant, has filed a Motion seeking the following orders that .
  - i. The Honorable Court may be pleased to grant an order under the provisions of Article 25, as read with Article 51 of *the Constitution*, so that the applicant may be moved from prison custody to address the Court in mitigation of the review of the imposed sentence.
  - ii. The court be pleased to declare, in accordance with Article 6(4) and Article 14(5) of the International Covenant on Civil and Political Rights, as read with Article 2(5) and (6) of *the Constitution* of Kenya, that every person has the right to apply for a review of their sentence.
  - iii. The court be pleased to grant an order for the review of my sentence to redress the unfairness in the sentencing, as the mandatory nature of sentencing under Section 296(2) of the Penal Code left the Trial Magistrate's Court with no other optional sentence; hence, the imposed sentence was not a judicially evaluated sentence.
  - iv. The court be pleased to declare that the imposed sentence is inconsistent with Articles 25 and 50 of *the Constitution*, as the relevant factors of consideration before sentencing were not meaningfully taken into account due to the mandatory nature of sentence imposition under the charges I faced.
  - v. No cost to this application as the applicant is a pauper and has no money.
2. He deposes as follows in his affidavit that he was arrested, arraigned in court, and charged in Criminal Case No. 1564/2009 at Bungoma CM's Court with the offence of robbery with violence, C/Sec 296 (2) of the Penal Code. He was tried upon the charge, found guilty, and hence convicted and sentenced to death. Hon. Ngarngar (CM). He appealed against both conviction and sentence in the High Court Criminal Appeal No. 122 of 2010 at Bungoma, which was dismissed by Hon. Muchemi (J) & Hon. Onyancha (J). Being dissatisfied with the upheld trial court judgment by the 1st Appellate Court, he proceeded and appealed further in the Court of Appeal vide Criminal Appeal No. 204/2011 at Eldoret, and the appeal was also disallowed by Hon. Musinga (J.A), HON. Gatemba (J.A) and Hon. Maraga (JA), and hence exhausted all avenues of appeal. The original death sentence was commuted to a life sentence as per presidential decree in the year 2016, which he now seeks to review. His prayer in respect of this application is that this honorable court be pleased to review my sentence downward, since during its imposition the trial court's discretion was limited by the mandatory nature of sentencing under Section 296 (2) of the Penal Code, contrary to the current jurisprudence whereby sentencing is a matter within the trial court's discretion. The honorable court be pleased to consider that under Article 6 (4), 14 (5) of the International Covenant on Civil and Political Rights, as read with Article 2 (5) (6) of *the Constitution*, he rightfully seeks review of the imposed mandatory death penalty. The honorable court be pleased to exercise its revision jurisdiction, as opined in paragraph 50 (e) (f) of the Supreme Court ruling in Application No. 2/2011, in redress of unfair trial in sentencing accorded by the trial court due to the mandatory nature of sentence imposition under Section 296 (2) of the Penal Code.
3. The application was opposed by the Respondent. Miss Matere, for the Respondent, submitted that the only lawful sentence under section 296(2) of the Penal Code is death. Although she had earlier stated that he could be sentenced to 30 years' imprisonment, the jurisprudence has since changed.



## Determination

4. I have considered the application, the applicant's affidavit, the parties' oral submissions, and the provisions of the law cited by the parties. There is no dispute that the applicant has exhausted all available avenues of appeal. He is now back in the High Court seeking a review of his sentence. The law permits the review of sentences, and each case is considered on its own merits, as provided for under section 364 of the Criminal Procedure Code.
5. In his application, the applicant has cited various provisions of *the Constitution* without explaining how they affect his current sentence. I am aware that the jurisprudence on sentencing under section 296 of the CPC has changed. In the Republic v Mwangi case, Petition E018 of 2023, the Supreme Court held as follows;
  45. whilst sentencing is an exercise of judicial discretion, Parliament sets the parameters for sentencing for each crime in statute. We stated as follows: "66. We must also reaffirm that, although sentencing is an exercise of judicial discretion, it is Parliament and not the Judiciary that sets the parameters of sentencing for each crime in statute. As such, striking down a sentence provided for in Statute must be based not only on evidence and sound legal principles but also on an in-depth consideration of public interest and the principles of public law that informed the making of that specific law. A judicial decision of that nature cannot be based on private opinions, sentiments, sympathy or benevolence. It ought not to be arbitrary, whimsical or capricious. However, where a sentence is set in Statute, the Legislature has already determined the course, unless it is declared unconstitutional, based on sound principles and clear guidelines, upon which the Legislature should then act. Suffice to say, where Parliament enacts legislation, the Judicial arm should adjudicate disputes based on the provisions of the law. However, in the special circumstances of a declaration of unconstitutionality, the process is reversed".
  46. In *Muruatetu I*, faced with a similar question of ascribing a term sentence to life imprisonment, this Court considered Article 51 of *the Constitution* which provides for the rights of detained persons. Sub article 3 thereof specifically tasks Parliament with enacting legislation for the humane treatment of detainees, persons in remand and convicts. We, therefore, held that while life imprisonment ought not necessarily mean a prisoner's natural life, it is for the Legislature to prescribe what constitutes life imprisonment and the parameters applicable, if at all. In that connection, we did, as the Supreme Court, recommend that the Attorney General and Parliament ought to commence an enquiry on this issue, and develop legislation on what constitutes a life sentence. Despite making this recommendation on 14th December 2017, and making an order that the Judgment be placed before the Speakers of the National Assembly and the Senate to, among other things, set the parameters of what constitutes life imprisonment, we note this recommendation has not been given consideration by the two offices of Parliament.
  47. In view of the foregoing, we find that the Court of Appeal ought not to have proceeded to set a term sentence of thirty (30) years as a substitution for life imprisonment, as the effect would be to create a provision with the force of law while no such jurisdiction is granted to it. The term of thirty years was arrived at arbitrarily without involvement of Parliament and the people. In consequence, we find that the Court of Appeal ventured outside its mandate and powers.
6. This is a decision by the Supreme Court, which binds this court. I find, based on the findings of the Supreme Court, that this court lacks the jurisdiction to review the sentence as sought by the applicant.



As guided by the Supreme Court, the court has no jurisdiction to substitute any sentence that has been expressly imposed without the involvement of Parliament and the people. The application, therefore, has no merit and is dismissed.

**DATED, SIGNED AND DELIVERED AT BUNGOMA ON THIS 20<sup>TH</sup> DAY OF FEBRUARY 2026.**

**R.E.OUGO**

**JUDGE**

In the presence;

Godfrey Juma Mukaka/Applicant

Miss Matere For the Respondent

Wilkister - C/A

