

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

CRIMINAL DIVISION

CRIMINAL MISC. APPLN NO. E196 OF 2025

NAFTALI OTIENO OKUNGU APPLICANT

- VERSUS -

REPUBLIC RESPONDENT

R U L I N G

1. This is a Motion on Notice dated **10/4/2025** by the applicant **NAFTALI OTIENO OKUNGU**. In it he sought that his sentence be reviewed to a least punitive one. The Motion was supported by his affidavit sworn on **10/11/2025**.
2. The background is that, the applicant was charged before the Principal Magistrate’s Court at Winam with the offence of Robbery with Violence contrary to **section 296(2) of the Penal Code Cap 63, Laws of Kenya**. After trial, he was found guilty, convicted and sentenced to serve 15 years’ imprisonment. That is the sentence which he alleges to be harsh and wants reduced.
3. **Section 296(2) of the Penal Code** provides: -

“If the offender is armed with any dangerous or offensive weapon or instrument, or is in company with one or more other person or persons, or if, at or immediately before or

immediately after the time of the robbery, he wounds, beats, strikes or uses any other personal violence to any person, he shall be sentenced to death.”

4. That provision has not been amended. Both the Supreme Court of Kenya and the Court of Appeal, the top Courts in his country have held that, unlike **section 203 of the Penal Code**, which the Supreme Court gave guidance on Muruatetu principles, the sentence under section 296(2) is still valid.
5. This means that once convicted under that section, one is supposed to face the death sentence. In this regard, the applicant is lucky that this is not an appeal. Otherwise, the State could seek enhancement of the sentence as the 15 years he was sentenced to was not only unlawful but also not in accordance with the law.
6. That being the case, this Court has no jurisdiction under the law to review the said sentence. Let him appeal, if he did not do so, but with the attendant danger of a possibility of the enhancement of the sentence as already stated.
7. In the circumstances, the Court finds that the application is without merit and dismisses the same.

It is so ordered.

DATED and **DELIVERED** at Kisumu this **6th** day of **March, 2026**.

A. MABEYA, FCI Arb
JUDGE