



**Mulandi v Attorney General & 2 others (Constitutional Petition
E003 of 2025) [2026] KEHC 2416 (KLR) (26 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 2416 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
CONSTITUTIONAL PETITION E003 OF 2025**

JN ONYIEGO, J

FEBRUARY 26, 2026

IN THE MATTER OF ARTICLE 22(1) OF THE CONSTITUTION

BETWEEN

ONESMUS KALI MULANDI PETITIONER

AND

THE ATTORNEY GENERAL 1ST RESPONDENT

DIRECTOR OF PUBLIC PROSECUTION 2ND RESPONDENT

DEPUTY REGISTRAR HIGH COURT AT GARISSA 3RD RESPONDENT

JUDGMENT

1. The petitioner moved this court via a petition dated 30.09.2025 seeking for the following declarations:
 - i. The petitioner's sentence of life imprisonment be deemed equivalent to the time already served in consonance to the provisions of articles 28 and 29 (d) of *the constitution*.
 - ii. Any other relief that the Honourable Court may deem fit and just to grant in the interest of justice.
2. The petitioner, currently serving a term of imprisonment at Kamiti Maximum Prison was tried, convicted and sentenced to death for the offence of robbery with violence under section 296(2) of the Penal Code. His initial death sentence was upheld by both the High Court and the Court of Appeal. That a declaration by the former president commuted his death sentence to life imprisonment.
3. He now approaches this court seeking a declaration that his constitutional rights under Articles 28 and 29 have been infringed. He argues that life imprisonment, by its very nature, undermines human dignity and adversely affects a prisoner's health and general wellbeing. Relying on Article 165 of *the*



Constitution, which grants the High Court jurisdiction to enforce fundamental rights, he pleads with the court to exercise its mandate and revise his sentence.

4. In essence, the petitioner's case rests on the claim that indefinite incarceration amounts to cruel and degrading treatment; He urged the court to intervene by substituting his sentence with a lesser and more proportionate term.
5. In support of his petition, the petitioner restated that he was arrested and charged with the offence of robbery with violence under section 296(2) of the Penal Code. That he pursued an appeal against the trial magistrate's decision, but Hon. Lady Justice Mutuku dismissed the same and upheld the finding by the trial magistrate. His subsequent appeal before the Court of Appeal was likewise dismissed for lack of merit.
6. Following the presidential proclamation commuting death sentences to life imprisonment, his sentence was accordingly commuted to life imprisonment. He now contends that a life sentence is not only cruel but also unduly harsh thus contravening Articles 50(6)(a) and (b) of the Constitution as well as sections 4 and 8 of the Fair Administrative Action Act, No. 4 of 2015. On this basis, he implores this court to grant the reliefs sought in his petition.
7. The 2nd respondent, in its submissions maintained that the petitioner was lawfully charged with the offence of robbery with violence, convicted and sentenced to death. That sentence was later commuted to life imprisonment. It was further pointed out that the petitioner challenged both his conviction and sentence before the Court of Appeal in Nairobi. However, the appellate court dismissed the appeal finding no merit in his arguments and affirming the decision of the High Court.
8. In essence, the respondent's position is that due process was followed at every stage of the proceedings, and the conviction and sentence have already been tested and upheld by the superior courts. He underscored the position that the petition lacks a proper foundation for revisiting the sentence.
9. The petition was canvassed by way of written submissions.
10. The petitioner urged the court that he has been in custody for a period of 17 years and therefore, his sentence ought to be revised. The 2nd respondent on the other hand opposed the petition urging that, the petitioner had ample opportunity during the proceedings before the High Court to raise any concerns regarding alleged violations of his rights. That the High Court, after considering his submissions, nonetheless upheld the finding of the trial court. It was emphasized that, even during that time, the High Court was vested with the authority to evaluate the evidence presented and reach its own conclusion, which it duly did.
11. Based on the above submission, the 2nd respondent contended that this Court is now functus officio, having already exercised its jurisdiction in the matter. Consequently, learned counsel opined that this court cannot reopen or re-litigate issues that have been conclusively determined by both the High Court and the Court of Appeal. To that end, reliance was placed on the case of *Kabansora Millers Ltd vs Nyangena* [2025] KEHC (KLR) where the court held that:

“The functus officio principle serves to ensure finality in judicial decisions and prohibits courts from revisiting matters already conclusively determined except where expressly permitted by law. It promotes judicial efficiency, certainty and the integrity of the judicial process”.



12. Additionally, reliance was placed on the case of Republic vs Manyeso [2025] KESC 16 (KLR) at para 69 where the court stated that:
- “ Our findings herein-above effectively lead us to the conclusion that the Judgement of the Court of Appeal delivered on July 7, 2023 is one for setting aside. The Court of Appeal did not have jurisdiction to interfere with the sentence imposed by the trial court and affirmed by the first appellate court. Consequently, the life imprisonment sentence remains lawful...”
13. That the Supreme Court having held that life imprisonment is lawful, all the other courts below it are bound by that decision. That the foregoing is the requirement of *the Constitution* under Article 163(7) of *the Constitution* which states that all courts, other than the Supreme Court, are bound by the decision of the Supreme Court.
14. To that end, this court was urged to dismiss the petition herein and be guided by the finding of the Supreme Court that life penalty imposed upon the petitioner is lawful.
15. I have considered the petition and submissions by the 2nd respondent. The main issue for determination is whether this court retains jurisdiction to revisit the petitioner’s conviction and sentence, or simply put; whether it is functus officio.
16. It is a settled principle of law that this Honourable Court may only exercise jurisdiction as conferred upon it by *the Constitution*, statute or both. A court cannot assume jurisdiction that has not been granted by law, nor can it exceed the limits of the jurisdiction so conferred. This principle has been consistently affirmed in Kenyan jurisprudence, including the case of Owners of the Motor Vessel “Lillian S” vs Caltex Oil (Kenya) Ltd [1989] KLR 1, where the Court of Appeal held that jurisdiction is everything, and without it, a court must down its tools.
17. After his unsuccessful appeal to the Court of Appeal, the petitioner now seeks that this Court reviews the decision of its superiors. The petitioner seeks to have this court revise his sentence on constitutional grounds. In the same breadth, the petitioner invoked Article 50(6), which provides for a new trial where new and compelling evidence emerges. I must reiterate the submissions by the 2nd respondent that this court must therefore first determine whether it has jurisdiction to entertain the petition before considering the substantive issues raised.
18. It is not in doubt that by dint of Article 165(6) therefore, this Court cannot reopen or re-litigate those issues absent new and compelling circumstances which are lacking in this case. Similarly, the petitioner’s reliance on the *Fair Administrative Action Act* is equally misplaced as sentencing is a judicial function rather than an administrative one.
19. In light of the foregoing, I do not find merit in the petition as the court is functus officio. In any event, the Supreme Court has already settled the issue touching on the legality of the impugned sentence (life imprisonment) which is still a lawful sentence in our relevant statute. Accordingly, I am inclined to dismiss the petition herein for being incompetent and want of jurisdiction.

DATED, SIGNED DELIVERED VIRTUALLY THIS 26TH DAY OF FEBRUARY 2026

J.N.ONYIEGO

JUDGE

