

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
CRIMINAL REVISION NO. E108 OF 2024

PETER KARUGA alias

MURIU.APPLICANT

-VERSUS-

REPUBLICRESPONDENT

RULING

1. The Applicant was charged in Magistrate Court Criminal Case No. 1288 of 2000 of robbery with violence contrary to section 296(2) of the Penal Code.
2. The Applicant pleaded guilty and was thus convicted by the trial Court and sentenced to death.
3. The Applicant being dissatisfied with the conviction and sentence filed a first Appeal to the High Court at Nairobi in Criminal Appeal No. 537 of 2000. The High Court being a court of first Appeal, evaluated the evidence and thereafter dismissed the appeal in its entirety as the said appeal lacked merit. The conviction and sentence of the trial court were upheld on 4th June 2003.
4. There is no record whether the Applicant filed a second ^{Appeal} to the Court of Appeal.
5. The Applicant has now filed an undated Notice of Motion dated vide in this Revision file seeking for:
 - i. Spent
 - ii. review the death sentence imposed by the Trial Court, confirmed by the High Court and later commuted to life imprisonment to a more lenient sentence pursuant to Article 50(2)(p)(q) of the Constitution.
 - iii. the period spent in remand custody be computed into the eventual sentence to be awarded pursuant to the

provisions of section 333(2) of the Criminal Procedure Code and also pursuant to Jona & 87 Others v Kenya Prisons Service & 2 Others Petition 15 of 2020 [2021] KEHC 457 (KLR).

- iv. should the eventual computation result into a balance of three (3) years or less, the Court be pleased to grant probation orders if his circumstances so fit.
 - v. Any other order that the honourable court deems fit to give in the interest of justice.
6. The Respondent is opposed to the instant application and contends that this court has no jurisdiction to entertain the application for review of the sentence and pray that the application be dismissed in its entirety.
 7. The application was canvassed through written submissions. The Appellants submissions are undated
 8. I have considered the application and the Parties submissions. I have established that the High Court in Nairobi in High Court Criminal Appeal No. 537 of 2000 between the Applicant Peter Karuga alias Muiru v Republic fully analysed the proceedings of the Trial Court and rightfully concluded that the plea of guilty by the Applicant was unequivocal admission of the offence and the record could not be faulted. The High Court concluded that Section 348 of the Criminal Procedure Code was clear that no appeal arising from unequivocal plea of guilty shall be allowed except as to the extent or legality of the sentence. The High Court further held that the sentence was mandatory and legal and thus the appeal had no merit and was dismissed.
 9. It is to be noted that the High Court in Nairobi in the Criminal Appeal No. 537 of 2000 and this Honourable Court are of concurrent jurisdiction and therefore; this Court cannot purport to overturn the judgment and findings of the court of similar jurisdiction.
 10. The sentences in Section 296(2) of the Penal Code have not been declared unconstitutional in any court of law, neither has any case as regarding robbery with violence entitled to resentencing. Further the death sentence has not been declared unconstitutional in any court of law within the Republic of Kenya. The death sentence that was

meted upon the Applicant is a proper and valid sentence within the jurisdiction of the Republic of Kenya.

11. Further, the Applicant's averments that he has no pending appeal and that the DEATH sentence was later commuted to LIFE sentence by H.E the President are not true. There is no indication that the Applicant had filed a second appeal at the Court of Appeal or that H.E the President commuted his death sentence to life sentence.
12. The Applicant is also not entitled to an order of resentencing as the sentence meted upon him was legal, proper, valid and in accordance with the penalty under the provisions of Section 296(2) of the Penal Code. The decision of the court trial court was not improper, erroneous, mistaken or was it illegal to warrant interference by this court.
13. In ***William Mwangale Ongoma v Republic [2020] KEHC 1446 (KLR)*** the learned judge held that:

*".... A court in revision is not concerned with the merits of the decision of the court but rather on the impropriety, mistake, illegality of the order, sentence or judgment..... This court's powers of revision are limited to satisfying itself as to the correctness, legality or propriety of any findings, sentence, or order recorded or passed and as to the regularity of any proceeding of any such subordinate court and in exercising supervisory jurisdiction under **Article 165(6) of the Constitution** the court does not exercise appellate jurisdiction and therefore cannot review or re-weigh evidence upon which the determination of the lower court was based and can only upset an order which it considers erroneous, without jurisdiction and constitutes gross violation of the fair administration of justice....."*

14. The sentence imposed on the Applicant was proper and within the law under circumstances.
15. According to this court, the Applicant did not exhaust his right of appeal in the Court of Appeal and Supreme Court. A reading of **Section 362 and 364 of the Criminal Procedure Code**, the High Court can only revise the decision of the Magistrate's Court and not

of a court of similar, equal, competent and concurrent jurisdiction to the High Court.

16. To review the Applicant's sentence, as urged would be tantamount to sitting on appeal against a sentence of a court of concurrent jurisdiction and that is not permissible under the law.
17. It is also to be noted that the **Muruatetu I Case**, the Supreme Court declared the mandatory death sentence in murder cases to be unconstitutional and the same Supreme Court clarified in **Muruatetu II** that the application before them and the ruling related to murder cases only under Section 203 and Section 204 of the Penal Code. The ruling declared the mandatory nature of the death sentence in murder cases as unconstitutional. Thus, the rulings in both **Muruatetu I and Muruatetu II** do not relate to robbery with violence offences or other offences.
18. Based on the above, the Applicant cannot come back to this court for review of a death sentence for robbery.
19. In addition, this court having the same jurisdiction with the court that heard and determined his appeal being the High Court is functus officio. If the Applicant has any grievances, he can only move the Court of Appeal then the Supreme Court if he so wishes.
20. Alternatively, the Applicant may be best advised to petition for the President's Power of Mercy under Article 133 of the Constitution and the Power of Mercy Act. This Advisory Committee is established to advise the President in exercise of that function and has power to consider the grounds raised by the Applicant - See section 22 of the Power of Mercy Act. Section 20 (5) of the Act obligates the Cabinet Secretary and Committee to make available to correctional facilities the forms necessary for filing the petitions hence it is an option open to the Applicant. I have perused the Probation and After Care Report dated 18th November 2025 and the same is positive about the Applicant and the same may be submitted to the Committee for Power of Mercy for consideration should the Applicant make the relevant petition to it.
21. For the above reasons the Applicant's application for review is found to be beyond the jurisdiction of this court and is declined.
22. File closed.

RULING WRITTEN, SIGNED & DATED AT MACHAKOS THIS 23RD FEBRUARY
2026

**NOEL I. ADAGI
JUDGE**

DELIVERED VIRTUALLY ON TEAMS AT MACHAKOS THIS 23RD FEBRUARY
2026

In the presence of

In person..... for Applicant

Ms. Agatha..... for Respondent

Milly grace..... Court Assistant