



REPUBLIC OF KENYA



**Onsongo v Republic (Miscellaneous Criminal Case E012 of 2026)
[2026] KEHC 2848 (KLR) (24 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 2848 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
MISCELLANEOUS CRIMINAL CASE E012 OF 2026**

TW CHERERE, J

FEBRUARY 24, 2026

IN THE MATTER OF: KEROKA PM'S CRIMINAL CASE NO. 232 OF 2017

AND

IN THE MATTER OF: HIGH COURT CRIMINAL APPEAL NOS. 76, 77, 79 & 80 OF 2017

AND

IN THE MATTER OF: COURT OF APPEAL CRIMINAL APPEAL NO. 40 OF 2019

AND

**IN THE MATTER OF: SECTIONS 216, 323, 329 AND
333(2) OF THE CRIMINAL PROCEDURE CODE**

AND

IN THE MATTER OF: ARTICLE 22, 23, 50(2)(P) AND 159 OF THE CONSTITUTION

BETWEEN

JOSPHAT SERETI ONSONGO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant and others were charged before the Principal Magistrate's Court at Keroka in Criminal Case No. 232 of 2017 with the offence of robbery with violence contrary to section 296(2) of the *Penal Code*. Upon conviction, he was sentenced to suffer death.
2. Being dissatisfied, they appealed to this Court in consolidated Criminal Appeal Nos. 76, 77, 79 & 80 of 2017. The appeals were dismissed and both conviction and sentence upheld on 21st day of February 2019.



3. The Applicant thereafter lodged a second appeal to the Court of Appeal in *Onsongo v Republic* [2022] KECA 1181 (KLR). In a judgment delivered on 21st October 2022, the Court of Appeal dismissed the appeal in its entirety and affirmed both conviction and sentence.
4. The Applicant has now approached this Court by Notice of Motion dated 02nd February 2026 seeking review of the death sentence and resentencing on grounds, inter alia, that the mandatory nature of the death sentence is unconstitutional, that he has rehabilitated, and that he deserves leniency.
5. The sole issue for determination is whether this Court has jurisdiction to entertain the present application.
6. It is not in dispute that the Applicant's conviction and sentence were considered by this Court on first appeal and subsequently by the Court of Appeal on second appeal. The Court of Appeal rendered a final determination affirming the conviction and sentence.
7. Once the Court of Appeal rendered its decision affirming both conviction and sentence, the operative and binding sentence became that which was upheld by that Court. This Court's earlier determination ceased to stand independently and merged into the appellate judgment.
8. This Court has no authority to interrogate, revisit, review, vary or in any manner interfere with a decision of the Court of Appeal. Any such attempt would amount to this Court arrogating to itself appellate or supervisory jurisdiction over a superior court, a jurisdiction it does not have in law.
9. The provisions of the *Constitution* and the *Criminal Procedure Code* invoked by the Applicant do not donate jurisdiction to this Court to reopen a matter conclusively determined on second appeal. Those provisions cannot be used to circumvent the finality of the appellate process.
10. Accordingly, and for the foregoing reasons, I find that this Court lacks jurisdiction to entertain the present application for review and resentencing.
11. The Notice of Motion dated 02nd February 2026 is hereby dismissed for want of jurisdiction.

DELIVERED AT NYAMIRA THIS 24TH DAY OF FEBRUARY, 2026.

WAMAE. T. W. CHERERE

JUDGE

Appearances;

Court Assistant - Hilda.

Applicant - Present.

For the DPP - Mr. Chirchir (SADPP).

