



Agunga & another v Republic (Criminal Miscellaneous Application E014 of 2025) [2026] KEHC 4541 (KLR) (9 April 2026) (Judgment)

Neutral citation: [2026] KEHC 4541 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
CRIMINAL MISCELLANEOUS APPLICATION E014 OF 2025**

PJO OTIENO, J

APRIL 9, 2026

BETWEEN

GEOFFREY ODHIAMBO AGUNGA 1ST APPLICANT

NAFTALI OUMA ODAWO 2ND APPLICANT

AND

REPUBLIC RESPONDENT

(Arising from the judgment of in Homabay, HCCC NO. 32 OF 2014 delivered on the 6th May, 2016 and the subsequent decision, Kisumu, HCRA NO. 181 OF 2016)

JUDGMENT

1. Before this court is an application for revision of life sentence. The Applicants were first charged, convicted and sentenced to death sentence for an offence of murder contrary to section 203 as read with section 204 of the Penal Code in Criminal Case No. 32 of 2014. Even though an application for revision ordinarily deserves no rehashing of the evidence led at trial, this matter presents a deserving case for the evidence to be regurgitated because at the end of the exercise, the severity or leniency of the sentence must reflect any mitigating or aggravating circumstances availed to the court.
2. The conviction followed an incident that occurred on the night of 26th March, 2012, within the Kakelo Dudi Sub-location of Homa Bay County. The victims, the family of John Ong'ondo Marianja (Deceased), a former councillor, were subjected to a violent home invasion that resulted in the death of the patriarch pursuant to extreme and violent brutality.
3. The prosecution's narrative at the trial revealed that at approximately 1:00 am, a gang of about ten men forcibly gained entry into the deceased's residence. The primary eyewitness, PW1, the son of the deceased, provided a harrowing account of the events. He testified that he was awakened by his father's screams as the latter fled toward the bedroom. Upon emerging into the corridor, PW1 was confronted by the 1st applicant who struck him twice on the left shoulder with a machete. PW1 testified



that although the house was dark, he was able to positively identify the 1st applicant due to the light emanating from a torch the assailant was carrying, which reflected against the white interior walls. Furthermore, PW1 identified the 2nd applicant, Naftali Ouma Odawo, as the individual carrying a five-litre jerrican of petrol which was subsequently poured on PW1 with the intent to set him on fire.

4. Medical evidence provided by PW2 further illustrated the severity of the attack. The post-mortem examination revealed eight massive cut wounds to the head, ranging from 8cm to 12cm in length, which had fractured the skull and caused blood to accumulate in the cranial cavity. Additionally, the deceased suffered a bone-deep cut on the right arm and a perforated abdominal cavity resulting from a wound to the lower back. The cause of death was officially determined to be severe head injury and massive haemorrhage.
5. The trial court after full trial found the prosecution to have proved to beyond reasonable doubt of the charges against the Applicants. In its judgment delivered on 6th May, 2016, the court convicted the applicants of murder and sentenced them to death in accordance with the then-mandatory provisions of Section 204 of the Penal Code.
6. Dissatisfied with this outcome, the applicants lodged an appeal at the Court of Appeal in Kisumu, Criminal Appeal No. 181 of 2016. They challenged the safety of the identification, the lack of recovered murder weapons, and the constitutionality of the mandatory death sentence. On the 21st October 2022, the Court of Appeal dismissed the entire appeal. The applicants' death sentences imposed by the trial court were subsequently commuted to life imprisonment by way of a presidential decree.
7. The applicants have now once more approached the court vide Criminal Miscellaneous Application No. 14 of 2025 filed on 3rd February, 2025. The applicants now seek a revision of that indeterminate life sentence, requesting that it be converted into a determinate term of years and that the period they have spent in custody since their arrest on 26th March, 2012, be credited to their sentence under Section 333(2) of the Criminal Procedure Code. The application is supported by an affidavit in support deposing that the mandatory nature of the death sentence was declared unconstitutional by the Supreme Court in Francis Kariuki Muruatetu and Another v Republic (2017) eKLR. He further argues that an indeterminate life sentence is equally unconstitutional, as it violates the right to human dignity under Article 28 of *the Constitution* and the principle of equality before the law under Article 27 of *the Constitution*.
8. The applicants rely heavily on the Court of Appeal's decision in Evans Nyamari Ayako vs Republic (Kisumu CRA No. 22 of 2018), where the appellate court held that indeterminate life imprisonment contravenes *the Constitution* and effectively translated such sentences to a fixed term of 30 years. The applicants submit that they have spent thirteen years in custody, have undergone significant rehabilitation, and are now remorseful.

Determination

9. The court has had the advantage of going through the trial record and by the very nature of the application, determines that the only issue for determination by this court is whether the applicants are entitled to reliefs sought in the application.
10. The applicants have invoked the High Court's revisional powers under Section 362 of the Criminal Procedure Code together with the High Court's supervisory jurisdiction under Article 165(6) of *the Constitution*. From the onset, the court entertains no doubt that those powers are limited supervisory



over over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.

11. The applicants' case was tried in the High Court and subsequently appealed to the Court of Appeal which are superior court as defined under Article 164 of *the Constitution*. Once the Court of Appeal delivered its judgment on 21st October, 2022, affirming the conviction and sentence, this court became functus officio having exhausted its official authority over the matter.
12. As held in *Tariasi Nyangares v Republic*, the High Court lacks the jurisdiction to revise a sentence once an appeal has been finalized. Furthermore, Section 364(5) of the Criminal Procedure Code explicitly bars revision proceedings at the instance of a party who had the right to appeal. In this case, the applicants not only had the right to appeal but exercised it, and their appeal was dismissed on the merits.
13. Any attempt to invite this court to revise a decision by the court of appeal would violate the hierarchical structure of the judiciary and the principle of finality in litigation. If the applicants are aggrieved by the Court of Appeal's judgment or the subsequent commutation of their sentence, their only legal recourse was a further appeal to the Supreme Court under Article 163(4) of *the Constitution*. This court has no power to alter the orders of the Court of Appeal.
14. The foregoing conclusion is sufficient to dispose the application but the court finds it necessary to consider the applicants industry and the vigour with which the application has been prosecuted and the heavy reliance on the decision of the supreme court in the Muruatetu's case. That decision and subsequent Court of Appeal decisions have been made the foundation for the argument that life imprisonment is unconstitutional.
15. the court is abreast of the subsequent decisions by the apex court which recently clarified and curtailed the scope of the Muruatetu precedent. In the landmark case of *Republic vs Julius Kitsao Manyeso*, SC Petition No. E013 of 2024, the Supreme Court held that the Muruatetu decision did not invalidate mandatory or minimum sentences prescribed in the Penal Code or the *Sexual Offences Act*. The Court overturned the Court of Appeal's decision in Julius Kitsao which had declared life imprisonment unconstitutional.
16. Similarly, in *Republic vs Joshua Gichuki Mwangi*, SC Petition No. E018 of 2023, the Supreme Court reaffirmed that mandatory minimum sentences for serious crimes are constitutional and serve the public interest by ensuring that prejudicial myths do not lead to inappropriately lenient sentences.
17. By the foregoing, the applicants' claim that their life sentences are unconstitutional is no longer justifiable. The life imprisonment remains a valid sentence and that courts have no jurisdiction to substitute it with a determinate term.
18. In conclusion, the court finds that application for the revision of the life sentence lacks merit for being oblivious of the pronouncements by the apex court and is hereby dismissed. The life sentence imposed upon the applicants following the commutation of their death sentences remains lawful, valid, and constitutional.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 9TH DAY OF APRIL 2026.

PATRICK J O OTIENO

JUDGE

