

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT LODWAR**  
**CONSTITUTIONAL AND HUMAN RIGHTS DECISION**  
**PETITION NO. E001 OF 2025**

**LOKITO EPEYON.....PETITIONER**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGEMENT**

1. The Petitioner has approached this Court by way of a Constitutional Petition dated 9<sup>th</sup> April 2025, seeking the intervention of the High Court to redress what he perceives as a violation of his fundamental rights and freedoms.
2. The background of the petition is given to be that Petitioner was charged with the offence of Robbery with Violence contrary to Section 296(2) of the Penal Code in Criminal Case No. 304 of 2016 at the Lodwar Law Courts. The prosecution's case was that on 22<sup>nd</sup> March 2016, at Loturerei area in Turkana County, the Petitioner, acting in concert with others, robbed Peter Ekaran of a motorcycle registration number KMDS 5963K TVS Star make, valued at Ksh. 130,000.
3. The circumstances of the robbery were particularly grave. The evidence presented at trial established that the deceased victim, Peter Ekaran, was last seen alive in the company of the Petitioner and another individual. The two had approached the deceased who then agreed to transport in his undertakings as a boda-boda operator. When the deceased failed to return, a search was commenced, eventually leading to the discovery of his remains; bones, clothing, and red slippers in a dry riverbed at Locher Emoil. Medical and forensic evidence, coupled with the recovery of the stolen motorcycle in Kitale where the Petitioner had attempted to sell it, formed a formidable chain of circumstantial evidence leading to the appellant's prosecution.

4. Following a full trial, the court found that the prosecution had proved the ingredients of Robbery with Violence beyond any reasonable doubt. The Petitioner was convicted and consequently sentenced to death.
5. he was dissatisfied with the conviction and filed his first appeal at the High Court at Lodwar, Criminal Appeal No. 14 of 2018. The appeal was heard on the merits following which a judgment was delivered on 3<sup>rd</sup> April 2019 which affirmed the conviction, and found no reason to interfere with the death sentence imposed by the trial court.
6. The Petitioner then exercised his right to a second appeal before the Court of Appeal in Nakuru, Criminal Appeal No. 117 of 2020. The Court of Appeal upheld the safety of the conviction but intervened on the matter of the sentence. Drawing upon the evolving jurisprudence concerning capital punishment and the Supreme Court's pronouncement in Francis Karioko Muruatetu & Another vs Republic eKLR, the Court of Appeal set aside the death sentence. In its place, the appellate court substituted a custodial sentence of 45 years imprisonment.
7. Still dissatisfied with the Court of Appeal substitution, the Appellant moved the High Court via HCCRREV/E137/2024, seeking a further review of the 45-year sentence. That revision application was dismissed on 25<sup>th</sup> October 2024, the court noting that the Petitioner had previously raised similar arguments regarding the computation and nature of his sentence in Lodwar Misc. App No. E086/2023, which had also been dismissed. Consequently, the court held that the matter had already been adjudicated and was not available for a second adjudication.
8. In the present Petition, the Petitioner raises several contentions. He argues that a 45-year sentence is harsh and excessive and does not reflect his unique circumstances. He asserts that the definition of life imprisonment is shifting and that a sentence exceeding human life expectancy violates his right to dignity under Article 28. Furthermore, he claims that the time he spent in remand custody was not properly computed into the final sentence as required by Section 333(2) of the

Criminal Procedure Code. He also highlights his purported reform and rehabilitation while in prison, seeking a non-custodial sentence or a significantly reduced term of years.

### **Determination**

9. Having examined the Petition, the supporting affidavit and the entire record of the file, the Court identifies the core issue for determination to be whether the Petitioner is entitled to the reliefs sought, including a further reduction of sentence or a non-custodial order.
10. The foremost issue to be resolved is whether this Court, as a High Court, can legally and constitutionally interfere with a sentence meted by the Court of Appeal. The Constitution of Kenya, 2010, establishes a clear hierarchical structure for the judiciary. Article 162(1) and (2) define the superior courts as the Supreme Court, the Court of Appeal, and the High Court along with courts of equal status. Within this hierarchy, the Court of Appeal occupies a superior position to the High Court.
11. Article 165(6) of the Constitution provides that the High Court has supervisory jurisdiction over the subordinate courts and over any person, body, or authority exercising a judicial or quasi-judicial function, but expressly states that this jurisdiction does not extend over a superior court. In the circumstances, the court takes cognisance of obvious fact that the sentence of 45 years was the considered judgment of the Court of Appeal in Criminal Appeal No. 117 of 2020. It is beyond the known jurisdiction of this court to purport to interrogate its legality, propriety or indeed appropriateness.
12. By asking this Court to review or reduce that sentence, the Petitioner is inviting the High Court to supervise and potentially overturn a decision of a superior court. The Supreme Court in **Kenya Hotel Properties Limited v Attorney General & 5 others (2022) KESC 62 (KLR)** has affirmed that such an action would be a usurpation of power and a breach of the constitutional judicial hierarchical order. Similarly, in the Court of

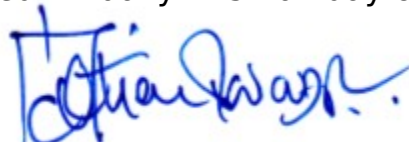
Appeal's decision in **Mwambeja Ranching Company Ltd & another v Kenya National Capital Corporation (2023) KECA 660 (KLR)** it was reaffirmed that while the Court of Appeal has residual jurisdiction to reopen its own judgments in compelling circumstances, such power does not reside in the High Court relative to appellate decisions. Therefore, even if the Petitioner were correct in his assertion that the 45-year sentence was harsh, the High Court simply lacks the jurisdiction to alter it.

13. Further, the doctrine of *functus officio* demands that once a court has duly pronounced a final order or judgment, its authority and legal effect over that specific matter stands exhausted. Here, the Court, having rendered its judgment on the first appeal in Criminal Appeal No. 14 of 2018, it became *functus officio* regarding the Petitioner's conviction and sentence. The subsequent intervention by the Court of Appeal reached its own finality when it delivered the judgment substituting the death sentence for 45 years. As noted in **Telkom Kenya Ltd v Ochanda (Suing on His Own Behalf and on Behalf of 996 Former Employees of Telkom Kenya Ltd) [2014] KECA 600 (KLR)**, the doctrine of *functus officio* is an enduring principle of law that prevents the reopening of a matter before the court that rendered the final decision.
14. Moreover, the doctrine of *res judicata* bars the re-litigation of issues that have already been adjudicated by a court of competent jurisdiction between the same parties. The Petitioner has already moved this Court via HCCRREV/E137/2024 and Lodwar Misc App No. E086/2023 seeking the same relief, a reduction of sentence. Both applications were dismissed on the merits. The Petitioner's attempt to bring the same grievance back to the High Court, this time under the label of a Constitutional Petition, is a clear violation of this principle and stands out as a brazen and unacceptable abuse of the court process.
15. As was correctly observed in the ruling of 25<sup>th</sup> October 2024 in HCCRREV/E137/2024, the matter is not available to be argued the second time. Litigation must come to an end to maintain the integrity of the

judicial system and prevent an endless cycle of frivolous filings. The Petitioner has exhausted his appeals and his revisionary opportunities within the High Court.

16. In view of the foregoing, this Court finds that the Petition dated 9th April 2025 is incompetent, lacks merit, and is an abuse of the court process. The matter has been dealt with and finalized by the superior court, and the principles of *functus officio* and *res judicata* apply in full force.
17. The upshot of the above is that the Petition is hereby dismissed for being abusive to the court process.
18. Because of the disclosed outright design and desire to abuse court process, it is directed that the applicant shall not file any other matter, be it by way of a petition or application without the leave of the court first sought and obtained.

Dated, signed and delivered virtually this 10<sup>th</sup> day of April 2026.



Patrick J O Otieno

Judge