



**Lokale v Republic (Miscellaneous Criminal Application
E017 of 2024) [2026] KEHC 4572 (KLR) (10 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 4572 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT LODWAR
MISCELLANEOUS CRIMINAL APPLICATION E017 OF 2024**

PJO OTIENO, J

APRIL 10, 2026

BETWEEN

SANDE JUMA LOKALE APPELLANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant, together with others, was charged before the Senior Principal Magistrate's Court at Lodwar in Criminal Case No. 311 of 2016 with the offence of robbery with violence contrary to section 295 as read with section 296(2) of the Penal Code. In the alternative, he faced a charge of handling stolen goods contrary to section 322(1) and (2) of the Penal Code.
2. Upon conclusion of the trial, the Applicant was convicted on the main count and sentenced to suffer death.
3. Aggrieved by both conviction and sentence, he preferred an appeal before the High Court at Lodwar in Criminal Appeal No. 4 of 2018, which appeal was dismissed in its entirety.
4. The Applicant has now moved this Court by way of a Notice of Motion dated 14th June 2024, brought pursuant to Articles 22, 23, and 165(7) of *the Constitution*, as well as section 333(2) of the Criminal Procedure Code. He seeks, in essence, a re-sentencing and an order that the period spent in custody be taken into account.
5. The application is premised on the grounds set out therein and supported by the Applicant's affidavit sworn on the same date. He avers that he has been in continuous custody since his arrest; that he has undergone rehabilitation; and that he was a minor, aged 17 years and a student, at the time of arrest. He urges the Court to consider his youthful age at the time of the offence and his reformation.



6. In his submissions, the Applicant invokes the objectives of sentencing as encapsulated in the Judiciary Sentencing Policy Guidelines, namely rehabilitation, restorative justice, and proportionality. He contends that the imposition of a harsh sentence, particularly one that negates the right to life, amounts to inhuman and degrading treatment. He further submits that, being a first offender, he ought not to have been subjected to the maximum penalty. In support, he relies on *R v Otieno* [1983] KLR and the decisions in *Nicholas Mukila Ndeti v Republic* [2019] eKLR and *Benson Ochieng & Francis Kibe v Republic* [2018] eKLR, where determinate custodial sentences were imposed for similar offences.
7. In a further set of submissions, the Applicant points out that his death sentence was subsequently commuted to life imprisonment. He reiterates that this Court is vested with jurisdiction to review his sentence and draws the Court's attention to the re-sentencing of his co-accused in *Lodwar High Court Miscellaneous Criminal Application No. 17 of 2019, Gideon Ngala Lomulen v Republic*.
8. The application is opposed. Learned counsel for the Respondent submits that robbery with violence remains a serious and prevalent offence and urges the Court to uphold the life sentence as commuted.

Analysis and Determination

9. It is not in dispute that there is no pending appeal before the Court of Appeal. The present application is therefore properly before this Court.
10. The nature of the relief sought, namely, re-sentencing and consideration of time spent in custody, places the application within the ambit of the Court's revisionary jurisdiction under sections 362 and 364 of the Criminal Procedure Code.
11. Paragraph 4.8.16 of the Judiciary Sentencing Policy Guidelines, 2023 sets out the circumstances under which an application for re-sentencing may properly be entertained. These include instances where, subsequent to conviction and sentencing, there has been a development in jurisprudence which ought to inform sentencing, and which, under the doctrine of stare decisis, trial courts are enjoined to take into account. In such circumstances, the Court is entitled to revisit the sentence so as to align it with the prevailing legal position. The Applicant's case falls squarely within this framework.
12. The jurisprudential landscape on sentencing for capital offences has undergone significant transformation following the decision of the Supreme Court in *Francis Karioko Muruatetu & Another v Republic* [2017] eKLR. The Court of Appeal, in *Manyeso v Republic* [2023] KECA 827 (KLR) and in *Evans Nyamari Ayako v Republic* (Kisumu Criminal Appeal No. 22 of 2022), underscored the constitutional concerns surrounding indeterminate sentences, particularly life imprisonment, and the need for courts to impose definite and proportionate custodial terms.
13. Sentencing is a matter of judicial discretion, to be exercised judiciously and in accordance with established principles. (See *Bernard Kimani Gacheru v Republic* [2002] eKLR). Among these principles is the doctrine of parity in sentencing, which demands that co-accused persons convicted in similar circumstances should receive comparable sentences unless there exist distinguishing features.
14. In the present case, the Applicant has demonstrated that his co-accused, who was convicted in the same transaction, was subsequently re-sentenced by this Court in *Gideon Ngala Lomulen v Republic* (*supra*) to a determinate term of seven (7) years, part of which was to be served on probation. No material distinction has been advanced by the Respondent to justify a differential sentence as between the Applicant and his co-accused.



15. To uphold a harsher sentence against the Applicant in these circumstances would occasion an unjustified disparity and offend the principles of equality before the law, fairness, and proportionality as enshrined in Articles 27 and 50(2) of *the Constitution*.
16. The Court must also take into account the Applicant's age at the time of the offence, his status as a first offender, the period already spent in custody, and the evidence of rehabilitation. These are relevant mitigating factors under both the Sentencing Policy Guidelines and constitutional principles.
17. This Court takes judicial notice of its earlier ruling delivered on 7th July 2021 in Lodwar High Court Miscellaneous Criminal Application No. 17 of 2019, wherein the co-accused was re-sentenced to a term of seven (7) years, structured as five (5) years' imprisonment and two (2) years on probation.
18. In the interest of consistency, parity, and justice, this Court finds no reason to depart from that determination.
19. The Applicant has been in custody since 22nd May 2016. A period exceeding seven (7) years has since elapsed.

Disposition

20. Consequently, the Applicant's sentence is hereby reviewed and substituted with a determinate term of seven (7) years' imprisonment.
21. Taking into account the period already served pursuant to section 333(2) of the Criminal Procedure Code, the Applicant is deemed to have fully served the sentence.
22. The Applicant shall therefore be released forthwith unless otherwise lawfully held.

DATED, SIGNED AND DELIVERED AT LODWAR THIS 10TH DAY OF APRIL 2026.

PATRICK J O OTIENO

JUDGE

