



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYANDARUA**  
**CONSTITUTIONAL CRIMINAL PETITION NO. E003 OF 2025**

**BETWEEN**

**CHARLES MWAURA.....PETITIONER**

**AND**

**THE DIRECTOR OF PUBLIC PROSECUTIONS..... RESPONDENT**

**JUDGMENT**

1. Charles Mwaura, the petitioner herein, filed a petition dated the 31<sup>st</sup> day of July 2025. He is seeking the following orders:
  - a) A declaration that the indeterminate life sentence as a prescribed form of punishment in the Penal Code in Kenya is unconstitutional for violating Articles 24,25, 26,28 and 29 of the Constitution of Kenya, 2010, as well as Kenya’s obligations under treaty law and customary international law binding upon Kenya, and is therefore null and void.
  - b) A declaration that the prescribed manner of serving an indeterminate life sentence is an unjustifiable discrimination, unfair and repugnant to the principle of equality before the law under Article 27 of the Constitution, as it denies the petitioner serving life imprisonment the opportunity to be heard in mitigation when those facing lesser sentences are allowed to be heard in mitigation.
  - c) An order declaring an indeterminate life sentence, the one the petitioner is currently serving, as unconstitutional, and in turn for this court to sentence the petitioner to a determinate sentence to be implemented by the prison’s authority at Naivasha Maximum Prison.
  - d) An order directing that the petitioners’ death sentence, and later commuted to a life sentence, be reviewed, and a determinate sentence given, instead of the life imprisonment that he is currently serving, considering mitigation factors, prison

recommendation, and the period he has served in prison since his arrest on the 9<sup>th</sup> day of April 2016.

- e) An order remitting the matter to the sentencing court for a sentencing hearing if the court deems this fit, allowing the petitioner an opportunity to benefit from the right of mitigation under sections 216 and 329 of the Criminal Procedure Code, and for the meting out of a determinate sentence.
- f) A structural interdict for the mention of this matter at intervals of two months to ascertain the status of compliance with Order D or E above.

2. The petition was premised on the following grounds:

- a) Petitioner contends that section 203, as read with section 204 of the Penal Code, which prescribes the death sentence as punishment for the offence of murder in Kenya, does not pass the criteria for acceptable limitation of the right to life in Article 24 of the Constitution of Kenya, and the same are therefore null and void for the reason that.
  - i) The death penalty itself, as well as the prescribed manner of execution in Kenya, is not reasonable and justifiable in an open and democratic society based on human dignity.
  - ii) The life sentence itself, as well as the prescribed manner of execution in Kenya, which is imprisonment for an offender's whole natural life, is not reasonable and justifiable in an open and democratic society based on human dignity and deprives the offender of any prospect of reforming or re-entering society, hence becoming a living death sentence.
  - iii) Our penal system has multiple less restrictive means to achieve the purpose for which the death sentence and life sentence may have been intended, namely, retribution for criminal offences and deterrence of criminal offences
  - iv) The provision for death sentence per se or an indeterminate life sentence (the living death sentence) in the offending legislation (S. 203 as read with section 204 of the penal Code) derogate form its core or essential content of the right to life because it takes away life itself by

execution or indeterminate imprisonment, and does not merely provide limitations to it.

- b) The petitioner avers that a life sentence in Kenya is not defined in law, and it is assumed that the life sentence means the number of years of the prisoner's natural life, hence it ceases upon their death.
  - c) The petitioner contends that the life sentence under Kenyan law, along with its specific method of enforcement—imposing a sentence for an offender's natural life—constitutes torture and cruel, inhuman, or degrading treatment or punishment. This violates Article 25 of the Constitution, which strictly prohibits such treatment without exception. Additionally, it breaches Article 29 of the Constitution.
3. The respondents were served but did not respond or file submissions.
  4. The petition is very mischievous. The applicant seeks to have this court interfere with the life sentence imposed by the Court of Appeal.
  5. The petitioner raised legal issues that should have been addressed by the Supreme Court after the Court of Appeal dismissed his appeal. This court cannot assume the authority of the Supreme Court by characterizing the petitioner's constitutional issues as such.
  6. When the High Court sitting at Naivasha delivered its judgment in this case, it lost its jurisdiction and is now *functus officio*. In **Raila Odinga & 2 Others v. Independent Electoral & Boundaries Commission & 3 Others [2013] EKLR**, the Supreme Court referenced an excerpt from Daniel Malan Pretorius's article, "**The Origins of the Functus Officio Doctrine, with Special Reference to its Application in Administrative Law**" (2005) 122 SALJ 832, which states:

*...The functus officio doctrine is one of the mechanisms by means of which the law gives expression to the principle of finality. According to this doctrine, a person who is vested with adjudicative or decision-making powers may, as a general rule, exercise those powers only once in relation to the same matter...The principle is that once such a decision has been given, it is (subject to any right of appeal to a superior body or functionary) final and conclusive. Such a decision cannot be reviewed or varied by the decision maker.*
  7. At paragraph 19 in the Raila Case (Supra), the Court further stated:

This principle has been aptly summarized further in *Jersey Evening Post Limited vs A1 Thani* [2002] JLR 542 at 550:

*A court is functus when it has performed all its duties in a particular case. The doctrine does not prevent the court from correcting clerical errors, nor does it prevent a judicial change of mind, even when a decision has been communicated to the parties. Proceedings are only fully concluded, and the court functus, when its judgment or order has been perfected. The purpose of the doctrine is to provide finality. Once proceedings are finally concluded, the court cannot review or alter its decision; any challenge to its ruling on adjudication must be taken to a higher court if that right is available.*

8. Sentencing is a judicial exercise. Once a judicial officer (magistrate or judge) has pronounced a sentence, they become *functus officio*. If the sentence is illegal or inappropriate, the only court which can address it is the appellate court. **Black's Law Dictionary, tenth (10th) Edition**, defines sentence as:

*The judgment that a court formally pronounces after finding a criminal defendant guilty; the punishment imposed on a criminal wrongdoer.*

9. If the petitioner was unhappy with the Court of Appeal's decision, the only recourse was to appeal to the Supreme Court. The appeals process functions like a "non-return valve," intended to allow movement in only one direction and promote finality. Similar to how fluids move in a single direction and prevent backflow, the appeal system ensures that once a higher court has made a final decision, the case cannot be reopened or re-litigated in a lower court.
10. Although the petitioner framed his claims as constitutional issues, his submissions clearly show he was unhappy with the Court of Appeal's decision.
11. The petition is therefore dismissed.

**Delivered and signed at Nyandarua, this 15<sup>th</sup> day of April 2026**

**KIARIE WAWERU KIARIE**

**JUDGE**