



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

CRIMINAL REVIEW NO E001 OF 2025

LEWIS NJOGU WAIRANGUPETITIONER

VERSUS

REPUBLIC RESPONDENT

JUDGMENT

[1] The Appellant/Applicant's application for re-sentencing by Criminal Revision No. E001 of 2025 must be declined for the following reasons:

- 1. The Appellants two appeals from conviction and sentence were dismissed by the High Court and Court of Appeal in Kerugoya HCCRA No. 14 of 2014 and Nyeri CA Cri. Appeal No. 194 of 2017, respectively.**
- 2. The earlier re-sentencing application in Petition No. 50 of 2022 the High Court reviewed the applicant's sentence of death to a sentence of imprisonment for 30 years.**
- 3. In the twin decisions of *Manyeso* [*Republic v Manyeso* [2025] KESC 16 (KLR)] and *Ayako* [*Republic v Ayako (Petition E002 of 2024)* [2025] KESC 20 (KLR)], the Supreme Court has ruled that the courts have no jurisdiction to re-sentence to a term of years in reduction of the death sentence prescribed for the offence of Robbery with Violence cases unless a constitutional petition in the fashion of *Muruatetu* case [*Francis Karioko Muruatetu & another v. Republic* [2017] eKLR] is filed and challenging the constitutionality of the death sentence in Robbery with Violence cases. See the *Muruatetu Directions* [*Muruatetu & another v Republic; Katiba Institute & 5 others (Amicus Curiae)* [2021] KESC 31 (KLR)].**

4. Moreover, having already exercised jurisdiction to resentence in Petition No. 50 of 2022 when this court reduced the sentence to one of imprisonment for thirty (30) years, rightly or wrongly, this court has already done all it could on an application for resentencing and it is properly as urged by the DPP in submissions dated 14th October, 2025 *functus officio*. See *Raila Odinga vs IEBC & 3 Others* [2013] eKLR citing the case of *Jersey Evening Post Limited vs A. Thani* [2002] JLR 542 at pg. 550 where it was stated that:

“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.”

5. The court has noted the further mitigation by the applicant that he has served 13 of the 30-year sentence and he has been rehabilitated while in prison and the positive indication by the Probation Officer’s Report dated 6th January, 2026 which recommends a non-custodial sentence in the nature of community service.
6. However, and most regrettably, this court has simply no jurisdiction to alter the sentence of death in a Robbery with Violence case (see *Manyeso & Ayako* cases) unless a full-fledged petition challenging the constitutionality of the death sentence in Robbery with Violence cases is litigated all the way to the Supreme Court.
7. The Court having become *functus officio* by the resentencing done by this court differently constituted before the *Muruatetu Directions* and the *Manyeso* and *Ayako* cases, also denies the Court any mandate to revisit the sentence now reduced to imprisonment for 30 years.
8. The provisions of Article 50 (2) (q) of the Constitution urged by the applicant apply to appeal to a higher court as the applicant has already

done by two appeals to be High Court No. 14 of 2017 and to the Court of Appeal Nyeri No. 194 of 2017. Any further appeal may only be to the Supreme Court, if the applicant is able to demonstrate grounds for further appeal in terms of Article 163 (4) (a) of the constitution.

ORDER

[2] Accordingly, for the reasons set out above, the appeal for revision of sentence is declined.

[3] File closed.

Order accordingly.

DATED AND DELIVERED THIS 16TH DAY OF APRIL 2026.

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. Mwangi for DPP.

Mr. Lewis Njogu Ndirangu, Applicant in Person.