Weru v Republic (Criminal Revision E037 of 2024)
[2026] KEHC 5021 (KLR) (21 April 2026) (Ruling)

Neutral citation: [2026] KEHC 5021 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NYERI

CRIMINAL REVISION E037 OF 2024

DKN MAGARE, J

APRIL 21, 2026

BETWEEN

FRANCIS MWANGI WERU ..... APPLICANT

AND

REPUBLIC ..... RESPONDENT

RULING

1. This is a ruling over an undated application filed on 24.5.2024 seeking rehearing of the sentence of life imprisonment imposed upon the Applicant.

2. The application is supported by the Affidavit of the Applicant and it was deposed in material as follows:

    a. The Applicant was convicted of the offence of robbery with violence contrary to section 296(2) of the Penal Code.

    b. The Applicant exhausted all appeals on conviction and sentence.

    c. The Applicant seeks this court to uphold *the constitution* to do substantial justice.

    d. The Applicant seeks this court to consider mitigation and give a lenient sentence.

Submissions

3. The Applicant submitted that resentencing was permissible under the Sentencing Policy Guidelines 2023. To anchor this point, he cited Shaban Salim Ramadhan & Others v DPP and Attorney General (2024) eKLR.

4. It was also submitted that life sentence was unconstitutional for which he relied inter alia on Manyeso v Republic (2023) eKLR.

Analysis

5. The issue is whether the Applicant's life sentence should be reviewed to a definite term.

6. In our current constitutional dispensation, a definite period of imprisonment is preferable which is significantly as near as possible equivalent to the life sentence. Therefore, there would be no harm for my intervention to ensure substantive justice in this matter. It is a settled principle that mandatory sentences deprive courts of discretion to impose appropriate sentences and are thus arbitrary and unconstitutional. The instant application is premised among others on Article 50 (2) (q) of *the Constitution*. Discretion in sentencing is a matter of justice and pertains to fair trial. Therefore, a person who suffers this deprivation may claim violation of the right to appropriate or less severe sentence - a principle embodied in *the Constitution* including article 50(2)(p) of *the Constitution* as follows:

   Every accused person has the right to a fair trial which includes the right:

   ... to the benefit of the least severe of the prescribed punishments for an offence, if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing.

7. The death sentence originally meted out on the Applicant was commuted to life imprisonment pursuant to the presidential decree. Re-sentencing merely provides an effective remedy to an injustice that may arise from a violation of a right or fundamental freedom. This was equally the view of this Court in Michael Kathewa Laichena & Another -v- Republic (2018) eKLR thus:

   > " ...by re-sentencing the petitioner, the High Court is merely enforcing and granting relief for what is in effect a violation caused by the imposition of the mandatory death sentence.'

8. There is no straight jacket formula for sentencing an accused person on proof of crime. As was held by the Court of Appeal in Thomas Mwambu Wenyi Vs Republic (2017) eKLR citing the decision of the Supreme Court of India in Alister Anthony Pereira Vs State of Mahareshtra at paragraph 70-71:

   > " Sentencing is an important task in the matter of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straight jacket formula for sentencing an accused person on proof of crime. The courts have evolved certain principles: twin objective of sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstance of each case and the courts must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances. The principle of proportionality in sentencing a crime doer is well entrenched in criminal jurisprudence. As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crime doer. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence.

9. The Applicant is serving life imprisonment. As I have established above, this court has jurisdiction to reconsider the indefinite life sentence meted upon the Applicant for the purposes of substitution with a determinate sentence. As was held in Francis Karioko Muruatetu & another v Republic; Katiba Institute & 5 others (Amicus Curiae) [2021] eKLR (Muruatetu II):

   In respect of other capital offences such as treason under Section 40(3) of the Penal Code, robbery with violence under section 296(2) of the Penal Code, and attempted robbery with violence under Section

297(2) of the Penal Code, a challenge on the constitutional validity of the mandatory death penalty in such cases should be properly filed, presented, and fully argued before the High Court and escalated to the Court of Appeal, if necessary, at which a similar outcome as that in the decision in question could be reached.

... All offenders who had been subject to the mandatory death penalty and desired to be heard on sentence were entitled to a re-sentencing hearing.

Where an appeal was pending before the Court of Appeal, the High Court would entertain an application for re-sentencing upon being satisfied that the appeal had been withdrawn.

10. In Muruatetu II, the Supreme Court was also categorical that the guidelines in Muruatetu I applied only with respect to sentences of murder under Sections 203 and 204 of the Penal Code.

11. The question of the constitutionality of death sentence is settled with ramifications that death sentence is unconstitutional. Subsequent jurisprudence has also determined that life imprisonment is equally unconstitutional and courts have remitted life sentences to a determinate period of time. This emerging jurisprudence is a product of a purposive reading of Articles 27 and 28 of *the Constitution* as applied to sentencing. In interpreting these provisions, the Court of Appeal, in the Malindi Criminal Appeal No. 12 of 2021, Julius Kitsao Manyeso v Republic (Judgement 7/7/2023) (unreported) stated as follows:

> " ...we are of the view that the reasoning in Francis Karioko Muruatetu & Another v Republic [2017 eKLR equally applies to the imposition of a mandatory indeterminate life sentence, namely that such a sentence denies a convict facing life imprisonment the opportunity to be heard in mitigation when those facing lesser sentences are allowed to be heard in mitigation. This is an unjustifiable discrimination, unfair and repugnant to the principle of equality before the law under article 27 of *the Constitution*. In addition, an indeterminate life sentence is in our view also inhumane treatment and violates the right to dignity under article 28, and we are in this respect persuaded by the reasoning of the European Court of Human Rights in Vinter & Others vs The United Kingdom (Application nos. 66069/09, 130/10 and 3896/10) 120161 Ill ECHR 317 (9 July 2013) that an indeterminate life sentence without any prospect of release or a possibility of review is degrading and inhuman punishment, and that it is now a principle in international law that all prisoners, including those serving life sentences, be offered the possibility of rehabilitation and the prospect of release if that rehabilitation is achieved."

12. As regards life sentence in sexual offences, the above decision (Manyeso) was however set aside vide the judgment of the Supreme Court of Kenya inRepublic v Manyeso (Petition E013 of 2024) [2025] KESC 16 (KLR) (11 April 2025) (Judgment) where the court stated as follows:

> " We therefore have no difficulty in finding that the Court of Appeal erred in law by substituting the life imprisonment sentence with a 40-year sentence, thereby usurping the legislative power to define sentences."

13. In Muruatetu I, the Supreme Court referred to the case of Vinter and others v. the United Kingdom (Applications nos. 66069/09, 130/10 and 3896/10) in which the Court held that:

> " 111. It is axiomatic that a prisoner cannot be detained unless there are legitimate penological grounds for that detention. As was recognised by the Court of Appeal in Bieber and the Chamber in its judgment in the present case, these grounds will include punishment, deterrence, public protection and

rehabilitation. Many of these grounds will be present at the time when a life sentence is imposed. However, the balance between these justifications for detention is not necessarily static and may shift in the course of the sentence. What may be the primary justification for detention at the start of the sentence may not be so after a lengthy period into the service of the sentence. It is only by carrying out a review of the justification for continued detention at an appropriate point in the sentence that these factors or shifts can be properly evaluated.

Moreover, if such a prisoner is incarcerated without any prospect of release and without the possibility of having his life sentence reviewed, there is the risk that he can never atone for his offence: whatever the prisoner does in prison, however exceptional his progress towards rehabilitation, his punishment remains fixed and unreviewable. If anything, the punishment becomes greater with time: the longer the prisoner lives, the longer his sentence. Thus, even when a whole life sentence is condign punishment at the time of its imposition, with the passage of time it becomes – to paraphrase Lord Justice Laws in Wellington – a poor guarantee of just and proportionate punishment.

14. The discretion to sentence permits a balanced and fair sentencing, which is a hallmark of enlightened criminal justice and proper consideration of the individual circumstances of each accused person is essential for substantive justice. In State vs. Tom, State v. Bruce (1990) SA 802 (A), Smalberger, JA, writing for the majority of Supreme Court of South Africa, made the following pertinent observations about sentencing in general and mandatory sentences in particular:

> " The first principle is that the infliction of punishment is pre-eminently a matter for the discretion of the trial court ... That courts should, as far as possible, have an unfettered discretion in relation to sentence is a cherished principle which calls for constant recognition. Such discretion permits of balanced and fair sentencing, which is a hallmark of enlightened criminal justice. The second, and somewhat related principle, is that of the individualization of punishment, which requires proper consideration of the individual circumstances of each accused person. This principle too is firmly entrenched in our law... A mandatory sentence runs counter to these principles. (I use the term "mandatory sentence" in the sense of a sentence prescribed by the legislature which leaves the court with no discretion at all -either in respect of the kind of sentence to be imposed or, in the case of imprisonment, the period thereof.) It reduces the courts normal sentencing function to the level of a rubber stamp. It negates the ideal of individualization. The morally just and the morally reprehensible are treated alike. Extenuating and aggravating factors both count for nothing. No consideration, no matter how valid or compelling, can affect the question of sentence... Harsh and inequitable results inevitably flow from such a situation. Consequently, judicial policy is opposed to mandatory sentences...as they are detrimental to the proper administration of justice and the image and standing of the courts."

15. A provision of law should not deprive the court of the use of its wise and beneficent discretion in a matter of life and death, without regard to the circumstances in which the offence was committed and, therefore, without regard to the gravity of the offence, for this can only be regarded as harsh, unjust and unfair. The Court in Mithu Singh vs. State of Punjab, 1983 AIR 473 stated as follows:

> " ...a provision of law which deprives the court of the use of its wise and beneficent discretion in a matter of life and death, without regard to the circumstances in which the offence

was committed and, therefore, without regard to the gravity of the offence, cannot but be regarded as harsh, unjust and unfair. It has to be remembered that the measure of punishment for an offence is not afforded by the label which that offence bears, as for example 'Theft, Breach of Trust' or 'Murder'. The gravity of the offence furnishes the guideline for punishment and one cannot determine how grave the offence is without having regard to the circumstances in which it was committed, its motivation and its repercussions. The legislature cannot make relevant circumstances irrelevant, deprive the courts of their legitimate jurisdiction to exercise their discretion not to impose the death sentence in appropriate cases, compel them to shut their eyes to mitigating circumstances and inflict upon them the dubious and unconscionable duty of imposing a preordained sentence of death. Equity and good conscience are the hall-marks of justice. The mandatory sentence of death prescribed by section 303, with no discretion left to the court to have regard to the circumstances which led to the commission of the crime, is a relic of ancient history. In the times in which we live, that is the lawless law of military regimes. We, the people of India, are pledged to a different set of values. For us, law ceases to have respect and relevance when it compels the dispensers of justice to deliver blind verdicts by decreeing that no matter what the circumstances of the crime, the criminal shall be hanged by the neck until he is dead."

16. It is beyond peradventure that the cardinal duty of this court does not rest until it ensures that the sentences so prescribed are imposed in accordance with *the Constitution*. In the Constitutional Court of Uganda's decision in Susan Kigula & 417 Others vs. Attorney General, Const. App. No. 3 of 2006 the Court observed thus:

> " The legislature has all the powers to make laws including prescribing sentences. But it is the duty of the courts to ensure that the sentences so prescribed are imposed in accordance with *the Constitution*."

17. The court also notes the purpose and objectives of sentencing as stated in the Judiciary Sentencing policy should be commensurate and proportionate to the crime committed and the manner in which it was committed. The sentencing should be one that meets the end of justice and ensures that the principles of proportionality, deterrence and rehabilitation are adhered to. The objectives of sentencing as set out in the 2023 Sentencing Guidelines are as follows: -

> " 1. 3.1 Sentences are imposed to meet the following objectives. There will be instances in which the objectives may conflict with each other – insofar as possible, sentences imposed should be geared towards meeting the objectives in totality.
>
> i. Retribution: To punish the offender for their criminal conduct in a just manner.
>
> ii. Deterrence: To deter the offender from committing a similar or any other offence in future as well as to discourage the public from committing offences.
>
> iii. Rehabilitation: To enable the offender to reform from his/her criminal disposition and become a law-abiding person.
>
> iv. Restorative justice: To address the needs arising from the criminal conduct such as loss and damages sustained by the victim or the community and to promote a sense of responsibility through the offender's contribution towards meeting those needs. Community

v. Protection: To protect the community by removing the offender from the community thus avoiding the further perpetuation of the offender's criminal acts.

vi. Denunciation: To clearly communicate the community's condemnation of the criminal conduct.

vii. Reconciliation: To mend the relationship between the offender, the victim and the community.

viii. Reintegration: To facilitate the re-entry of the offender into the society"

18. The Applicant's sentence was commuted from death sentence to life imprisonment. The determination of discretion varies according the circumstances of each case and it is not upon any court to stipulate a fixed term to be applied as life imprisonment. As regards life sentence in sexual offences, the above decision (Manyeso) was set aside vide the judgment of the Supreme Court of Kenya inRepublic v Manyeso (Petition E013 of 2024) [2025] KESC 16 (KLR) (11 April 2025) (Judgment) where the court stated as follows:

> " Paragraph 11 to 14 of the Muruatetu & another v Republic; Katiba Institute & 4 others (Amicus Curiae) [2021] KESC 31 (KLR) directions (Muruatetu Direction) were very clear that the decision in the Muruatetu & another v Republic; Katiba Institute & 5 others (Amicus Curiae) [2017] KESC 2 (KLR) (Muruatetu decision) did not invalidate mandatory sentences or minimum sentences in the Penal Code, *Sexual Offences Act* or any other statute. The Muruatetu decision could not be said to be the authority for stating that all provisions of the law prescribing minimum sentences were inconsistent with *the Constitution*. Paragraphs 93 to 97 of the Muruatetu decision were also explicit that it was not for the court to define what constituted a life sentence. While the Supreme Court appreciated that a life sentence could mean a certain minimum or maximum time to be set by a judicial officer, the Supreme Court made the recommendations to the Attorney General to develop legislation on what constituted a life sentence. It was upon the Legislature to enact legislation on what constituted a life sentence and not the courts.
>
> ... The Court of Appeal erred in law by substituting the life imprisonment sentence with a 40-year sentence, thereby usurping the legislative power to define sentences. The Court of Appeal did not have jurisdiction to interfere with the sentence imposed by the trial court and affirmed by the first appellate court. Consequently, the life imprisonment sentence remained lawful and in line with section 8 of the *Sexual Offences Act*"

19. As this court cannot stipulate what amounts to life imprisonment that the Applicant is serving, I am unable to interfere with the life sentence herein.

Determination

20. I make the following final orders:

a. This application is dismissed.

b. File is closed.

DELIVERED, DATED AND SIGNED AT NYERI ON THIS 21ST DAY OF APRIL, 2026.

Judgment delivered through Microsoft Teams Online Platform.

KIZITO MAGARE

JUDGE

In the presence of: -

Applicant present

Mr. Kihara for the State

PC Cosmas Mutiso at Manyani GK Prison

Court Assistant – Michael

M. D. KIZITO, J.