



**Mwangi v Republic (Constitutional Petition E007 of 2024)
[2026] KEHC 5901 (KLR) (28 April 2026) (Judgment)**

Neutral citation: [2026] KEHC 5901 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CONSTITUTIONAL PETITION E007 OF 2024**

GL NZIOKA, J

APRIL 28, 2026

BETWEEN

JOSEPH MAINA MWANGI PETITIONER

AND

REPUBLIC RESPONDENT

JUDGMENT

1. By an undated Notice of Motion application filed in court on 27th July, 2023, filed at Voi High Court and transferred to Murang'a vide Hon. Justice George Dulu on 6th November 2023, the applicant is seeking for the following orders:
 - (a) That, the honourable court be pleased to certify this application as urgent and be heard on priority basis.
 - (b) That, the honourable court be pleased to review the death sentence imposed by the trial court, confirmed by the High Court and later commuted to life imprisonment to a more lenient sentence pursuant to Article 50(2)(p)(q) of *the Constitution*.
 - (c) That, the period spent in remand custody be computed into the eventual sentence to be awarded pursuant to the provisions of Section 333(2) of the Criminal Procedure Code and also pursuant to *Jona & 87 others v Kenya Prison Services & 2 others (Petition 15 of 2020) [2021] KEHC 457 (KRL)*.
 - (d) That, should the eventual computation result into a balance of three (3) years or less, may the Honourable Court be pleased to grant me probation orders if my circumstances so fit.
 - (e) Any other order that the Honourable Court deems fit to give in the interest of justice.
 - (f) That, further grounds shall be adduced in the sworn supporting affidavit of Joseph Maina Mwangi among other grounds to be adduced during the hearing of this application.



2. The application is based on the grounds thereto which states:
 - (a) That I was charged and convicted for the offence of robbery with violence contrary to Section 296(2) of the Penal Code in Criminal case No.950 of 2003 at Murang'a Law Court and sentenced to suffer death.
 - (b) That, I lodged an appeal to the High Court vide HCCRA No.155 of 2005 at Nyeri but the same was dismissed in its entirety; conviction and sentence affirmed.
 - (c) That, I lodged an appeal to the Court of Appeal vide Court of Appeal No.300 of 2009 at Nyeri but the same was dismissed in its entirety; conviction and sentence affirmed.
 - (d) That, I thus have no pending appeal.
 - (e) That I was sentenced to a mandatory sentence as prescribed by Section 296(2) of the Penal Code without consideration of my mitigation or the unique facts and circumstances of my case.
 - (f) That, directions issued by the Supreme Court on 6th July 2021 in Francis Karioko Muruatetu & Another v Republic (2017) eKLR left it open to the High Court to hear any petition that may be brought challenging inter alia mandatory minimum sentences and make a determination.
 - (g) That the Supreme Court did not hold that the High Court not to apply the reasoning in Francis Muruatetu & Another v Republic (2017) eKLR.
 - (h) That, the Court of Appeal decision in Oprodi Peter Omukanga v Republic Criminal Appeal No.260 of 2019 (UR) is relevant in the present matter.
3. The application is also based on the affidavit sworn by the applicant/petitioner dated 25th July 2023 which reiterates the grounds thereto.
4. I have heard both parties in the application thro' ORI address as indicated on the record. Notably the following facts are not in dispute.
 - (a) The applicant was given a lawful death sentence in the Chief Magistrate's Court.
 - (b) The applicant exercised his right of appeal before the High Court. In that regard, the jurisdiction of the High Court was spent.
 - (c) The matter went to the Court of Appeal, consequently it cannot be heard again by the High Court after it has been heard by the Court of Appeal.
 - (d) The case of Muruatetu relate to murder cases only and this is a case of robbery with violence.
 - (e) The sentence herein is not death anymore, as such Muruatetu becomes untenable.

In conclusion, I find that this court is junctus officio as review of sentence herein is concerned. Further, the matter herein though stated to be a Petition, does not have any Petition filed.

In that case, the notice of motion application herein is dismissed/struck out due to want of jurisdiction. It is so ordered.

GRACE L. NZIOKA

JUDGE

28/4/2026

