



REPUBLIC OF KENYA



**Juma v Republic (Criminal Revision E088 of 2025)
[2026] KEHC 6221 (KLR) (11 May 2026) (Ruling)**

Neutral citation: [2026] KEHC 6221 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CRIMINAL REVISION E088 OF 2025
RN NYAKUNDI, J
MAY 11, 2026**

BETWEEN

YASIN CHOGO JUMA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. What is pending before this Honourable Court is a Notice of Motion Application dated 9th October 2025 in which the Applicant is seeking the following orders: -
 - a. Spent
 - b. That the mandatory nature of the Death penalty as provided for under section 296(2) and 297(2) of the penal code be deemed unconstitutional.
 - c. That the convicts serving the mandatory death sentence under section 296(2) and 297(2) of the Code be placed for re-hearing on mitigation and sentence depending on each petitioner's circumstances and the same be considered for their ultimate sentencing.
 - d. That the cost involved in preparation and determination of this matter be waived and the Hon. Court to see to it that the petitioners are present during the hearing and determination of the same.
2. The Application is made on the following grounds on the face of it among others: -
 - a. The applicant was charged with the offence of robbery with violence CRC NO. 510 of 2012 at Vihiga and sentenced to Death. He appealed to the High court of Kenya at Kakamega HCCA NO. 205 OF 2012, the appeal was dismissed. He went ahead to the court of appeal at Kisumu no. 129 of 2014 where the same was upheld.



- b. The applicant was commuted to life in 2016 by his H.E Uhuru Kenyatta by then.
- c. It is the applicant's constitutional rights to a least severe sentence pursuant to Article 50(2)(p) of *the Constitution* of Kenya 2010 and Section 26(2) of the Penal Code.
- d. It is the applicant's right to mitigation and fair hearing pursuant to section 216 and 329 of the CPC and Article 25 (c) and 50 of *the Constitution* of Kenya.
- e. Mandatory death sentence is degrading, demeaning, inhuman and harsh thus defeats the principle of human dignity as provided for under Article 28 of *the constitution* of Kenya.
- f. The applicant herein has spent 15 years in prison since his arrest in 2010 up to date.
- g. The application culminates from the rulings in the case of: -
 - a. Shaban Salim Ramadhan And Others Vs Rep. Criminal Pet. No. 5 OF 2022 in the High court of Kenya at Mombasa.
 - b. Douglas Muthaura vs Republic. Misc. Application No. 4 of 2015 in the High court of Kenya at Meru Coram: S. Chitembwe [judge] And A. Mabeya [judge].
 - c. Joseph Waiharu & 5 Others vs Rep. Cr. Pet. No. 50 and 58 of 2018 in the High court of Kenya at Meru. Coram: D.s Majanja [judge].
 - d. Richard Kiptum Yego vs Rep. Cr. Pet. No. 2 of 2018 in the High Court of Kenya at Eldoret.
 - e. Oprodi Peter Omukanga vs Republic (Criminal Appeal No. 260 of 2019) 430 [KLR].
 - f. The Court of Appeal in Thomas Mwambu vs Republic (2017) e KLR; that cited the decision of the Supreme court of India in Alister Anthony Pereira vs State of Maharashtra at paragraph 70-73.
 - a. The applicant is remorseful, reformed, rehabilitated and ready to be re-integrated back into the society if given a second chance.
 - b. The applicant pleads with this Hon. court to be sentenced to a less severe (definite)sentence OR for the time he has already spent in custody. OR from the time of his arrest.
- 1. The Application is supported by the annexed affidavit sworn by the applicant whose deponents echoed the grounds in support of the Notice of Motion Application.

Analysis and Determination

- 4. I have carefully considered the Application, the grounds in support thereof, the authorities cited and the law applicable. The sole issue for determination is Whether this Court has jurisdiction to entertain the present Application?
- 5. The complexity of this application is on the question of jurisdiction. This is a critical issue which must first receive conceptualization by the court. It is therefore necessary to place the question on



jurisdiction in perspective. In Halsbury's Laws of England (4th Edition) Vol. 9 at page 350 thus defines "Jurisdiction" as

..." the authority which a court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for decision.

6. In the same context "John Beecroft Sauners in his treatise words and phrases legally Defined Vol. 3 at Page 113 reiterates the latter definition of the term "jurisdiction" as follows: -

"By jurisdiction is meant the authority which a court has to decide matter that are litigated before it or to take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted and may be extended or restricted by like means. If no restriction or limits is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular court has cognizance or as to the area over which the jurisdiction shall extend, or it may partake both these characteristics. Where a court takes upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given." (See also the Owners of Motor Vessel Lilian "S" Vs Caltex Oil Kenya Ltd. (1989) KLR1 that the jurisdiction is everything without it a court cannot make a move. Lack of jurisdiction thus renders a court's decision void as opposed to it being merely voidable. When an act is void, it is a nullity ab ignition.

7. From the record before this Court, it is not disputed that the Applicant was convicted and sentenced by the trial court; thereafter he exercised his right of appeal before the High Court and subsequently before the Court of Appeal where both appeals were dismissed. Consequently, the conviction and sentence imposed upon the Applicant were conclusively affirmed by the Court of Appeal.
8. This Court notes that the Applicant now invites it to declare Sections 296(2) and 297(2) of the Penal Code unconstitutional and to re-open the issue of sentence through a re-hearing on mitigation. However, this Court cannot sit on appeal or review over decisions that have already been conclusively determined by the Court of Appeal. To do so would offend the hierarchical structure of courts established under *the Constitution*. Further, the Supreme Court in Francis Karioko Muruatetu & Another Vs Republic and the subsequent directions issued on 6th July 2021 expressly clarified that the decision in Muruatetu was applicable only to sentences of murder under Sections 203 and 204 of the Penal Code and did not automatically extend to other capital offences such as robbery with violence under Section 296(2) or attempted robbery with violence under Section 297(2) of the Penal Code unless specifically pronounced by a competent appellate court.
9. Accordingly, this Court lacks jurisdiction to re-open or reconsider the constitutionality and legality of the sentence imposed and affirmed by superior appellate courts in relation to the offence of robbery with violence. The appropriate forum for such constitutional and appellate relief lies before the superior courts clothed with the requisite jurisdiction. Equally, this Court notes that the Applicant's death sentence was already commuted to life imprisonment through executive clemency. The prayer seeking re-sentencing and declaration of unconstitutionality therefore falls outside the scope of this Court's revisionary jurisdiction under Sections 362 and 364 of the Criminal Procedure Code.
10. In the premises, I find that this Court lacks jurisdiction to entertain the present Application. Consequently, the Notice of Motion Application dated 9th October 2025 is hereby dismissed for want of jurisdiction. Orders accordingly.



DATED, SIGNED AND DELIVERED AT VIHIGA VIA CTS THIS 11TH DAY OF MAY 2026

.....

R. NYAKUNDI

JUDGE

