



**Angoga v Republic (Criminal Application E145 of 2024)
[2025] KECA 980 (KLR) (30 May 2025) (Ruling)**

Neutral citation: [2025] KECA 980 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CRIMINAL APPLICATION E145 OF 2024
MSA MAKHANDIA, HA OMONDI & LK KIMARU, JJA
MAY 30, 2025**

BETWEEN

MAULID ANWAR ANGOGA APPLICANT

AND

REPUBLIC RESPONDENT

(An application for resentencing emanating from the judgment of Okwengu, Omondi & J. Ngugi, JJ.A.) dated 9th February 2019 in Criminal Appeal No. 281 of 2018)

RULING

1. After going through the record leading to this application, one would easily appreciate that if foresight had graced the appellant's gaze, he would probably have let the sentence imposed by the trial court stay rather than embark on the courts' intricate appeals maze by challenging the trial court's judgment. His path from hope to despair, a journey fraught with rising dread, commenced when he lodged an appeal against the conviction and sentence of fifteen years imprisonment by the trial court for the offence of robbery with violence. Unbeknown to him, in an appeal, the stakes are fraught with danger. Small wonder that the initial sentence was on appeal was reviewed upwards to life imprisonment.
2. This harsh reality must weigh heavily on the applicant's mind, yet the scales of justice cannot tilt otherwise.
3. The history of this application is that on the night of 1st and 2nd October 2010, the applicant, with others, whilst armed with pangas and rungus, perpetrated a series of robberies against four complainants, during which they stole phones and money from them. As they fled the scene, the applicant hit a wall and fell down comatose. He was then apprehended by members of the public and handed over to the police. Subsequently, he was charged, tried, convicted, and sentenced to fifteen years imprisonment by the trial court on each of the four counts of robbery with violence contrary to section 296(2) of the Penal Code.



4. The applicant was not satisfied with the conviction and sentence and, therefore, appealed the decision to the High Court of Kenya at Kisii. Following a full plenary hearing, the High Court overturned the convictions and sentences in respect of all other counts save for count one. When it came to sentence, the High Court, acting on the notice to enhance the sentence, filed and served on the applicant by the respondent, duly revised the sentence, and imposed a life sentence.
5. Still dissatisfied with this outcome, the applicant filed a second appeal to this Court. This Court (Okwengu, Omondi & J. Ngugi, JJ.A), upon hearing the appeal, dismissed it in its entirety. Once again, acting on the notice to enhance the sentence filed and served on the appellant by the respondent, the court duly imposed the mandatory death sentence for the offence in line with the law regarding sentencing for such an offence.
6. It is on the basis of the foregoing that the applicant now finds himself before us on an application for resentencing on the grounds that, pursuant to paragraph 2.2.1 of the [Judiciary Sentencing Policy Guidelines, 2023](#), the court is vested with the authority to grant the applicant an opportunity to mitigate his case before sentencing. That before this Court, he was not allowed to mitigate before the death sentence was imposed. Consequently, the applicant seeks resentencing by this Court after considering the mitigation he may offer within the framework of the [Sentencing Policy Guidelines, 2023](#).
7. The application is further supported by the applicant's affidavit, sworn on the same date, wherein he reiterates and expounds on the issues aforesaid, and we need not rehash. Suffice to add that he is not married but aged 48 years. That his aging parents require his presence at home to care for them. He expresses remorse and regrets committing the crime. Additionally, he depones that the death sentence imposed on him constitutes a degrading and inhuman punishment, contravening Article 25 (a) of the [Constitution](#). The applicant asserts that the avenues for resentencing in finalized capital offences like his, were reopened by the Sentencing Policy Guidelines 2023 of the Judiciary, which emphasize the role of mitigation.
8. The respondent opposed the application through a replying affidavit sworn by Perin Awour, learned Prosecution Counsel. She deposed that the application was for striking out as it was not founded on any law and was, therefore, an abuse of the process of court. She also deposed that the applicant had appealed all the way to this Court, and this Court having pronounced itself on the matter, it was functus officio.
9. When the application came up for plenary hearing on our virtual platform, the applicant appeared in person, while Mr. Okango, learned Assistant Director of Public Prosecutions, appeared for the respondent. The applicant, in his submissions, reiterated that he was only seeking to be allowed to mitigate so that the court may consider the same and perhaps review the sentence imposed to a determinate term of imprisonment, which, upon completion, will allow him to reintegrate into society. He pleaded that he had learned his lessons during his time of incarceration and was prepared to reintegrate into the community.
10. On the other hand, Mr. Okango argued that the court was functus officio after delivering its judgment, which largely dwelt on sentence. He further contended that the application was legally flawed and should be dismissed accordingly.
11. We have considered the application, the supporting affidavit, and the oral submissions by both parties. The application seeks, in the main, resentencing based on the [Judiciary Sentencing Policy Guidelines, 2023](#). This Court's jurisdiction is set out under the [Appellate Jurisdiction Act](#), which grants it jurisdiction to hear appeals from the lower courts and tribunals. Whereas it can confirm, vary, or



set aside lower court sentences and convictions, the doctrine of *functus officio* comes into play once a judgment has been rendered by this Court. This doctrine is to the effect that once a court has finalized a matter, it cannot revisit the same unless there are compelling reasons or exceptional circumstances that warrant reopening the matter. In the case of *Jersey Evening Post Limited vs. A1 Thani* [2002] JLR 542 at 550, this principle was summarized thus:

“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”

12. In this case, and as already stated, the issue of sentence was at the core of the appeal, and this Court went ahead to pronounce itself on it. The appellant was duly served with the notice of intention by the respondent to ask the Court to enhance the sentence should he insist on pursuing the appeal. The appellant was therefore put on notice and cannot, therefore, be heard to complain about the sentence and or want of mitigation. Neither was it imposed *suo moto*. The sentence imposed, in any event, being mandatory in nature, we doubt whether mitigation or the [Judiciary Sentencing Policy Guidelines](#) would have assisted the appellant’s cause in any manner. We say so in the light of the decision of the Supreme Court in [Francis Karioko Muruatetu and Another vs. Republic](#) [2021] eKLR, which clarified that mandatory death sentences were still available for other capital offences, save for murder cases. Finally, the Judiciary Sentencing Policy Guidelines came into effect in 2023, long after the case was determined.
13. In the upshot, the application dated 19th September 2024 is devoid of merit and is accordingly dismissed.

DATED AND DELIVERED AT KISUMU THIS 30TH DAY OF MAY 2025.

ASIKE-MAKHANDIA

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JUDGE OF APPEAL

H. A. OMONDI

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JUDGE OF APPEAL

L. KIMARU

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JUDGE OF APPEAL

I certify that this is a True copy of the original

DEPUTY REGISTRAR

