



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Oluoch v Republic (Criminal Appeal 108 of 2020)
[2025] KECA 1064 (KLR) (13 June 2025) (Judgment)**

Neutral citation: [2025] KECA 1064 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CRIMINAL APPEAL 108 OF 2020
MSA MAKHANDIA, HA OMONDI & LK KIMARU, JJA
JUNE 13, 2025**

BETWEEN

KEVIN OTIENO OLUOCH APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an Appeal from the judgment of the High Court of Kenya at
Kisumu, (Ochieng, J) dated 20th September, 2018 in HCCRC No 8 of 2018)*

JUDGMENT

1. Kevin Otieno Oluoch, “the appellant”, was convicted and sentenced to death by the Senior Resident Magistrate’s Court at Tamu (Hon. P.K. Rugut SRM) on 9th October 2017 for the offence of robbery with violence, contrary to Section 296(2) of the *Penal Code*. The particulars of the offence were that on the night of 11th July 2017 at Owuor village in Muhoroni Sub-County, the appellant jointly with Simon Otieno Gitinya and Dennis Omondi Dumbé, and others not before court robbed Joshua Ngure, “the complainant”, during which personal violence was visited upon him. The appellant and the co-accused entered a plea of not guilty and their trial ensued culminating in the conviction and sentence to death of the appellant whereas the co-accused were all acquitted.
2. On appeal to the High Court in Kisumu, the court upon hearing it on merit, dismissed it in its entirety.
3. The appellant is now before us on a second and perhaps last appeal on one singular ground challenging the harshness and excessiveness of the death sentence imposed on him by the trial court and upheld by the first appellate court. The appellant through Ms. Omolo, learned counsel argues that the sentence of death imposed on him was disproportionate, considering the mitigation he had presented and the circumstances surrounding the offence. She urges that we review the sentence by substituting the sentence of death imposed with a non-custodial sentence of 15 years.



4. Counsel submitted that this court should consider alternative sentencing philosophies such as rehabilitation, reparation, and deterrence. She emphasized that the appellant had reformed during his time in custody, having already spent ten years in prison. She highlighted that the appellant was a young, first-time offender, had responsibilities, including caring for his wife and school-going children. She further pleaded with the court to take into account Section 333(2) of the *Criminal Procedure Code*, which requires consideration of the time spent in custody prior to sentencing. Additionally, the appellant cited the case of *John Ambiya Kharisya v Republic* [2020], where a custodial sentence of 40 years was reduced to 20 years, as a precedent for a more lenient sentence.
5. The appeal was opposed by the respondent. Mr. Okango, learned Assistant Director of Public Prosecutions submitted that robbery with violence carries a mandatory death sentence, as stipulated under Section 296(2) of the *Penal Code*. While the courts had previously considered alternative sentences following the Supreme Court decision in *Francis Karioko Muruatetu & Another v Republic* [2017] eKLR (Muruatetu 1), the Supreme Court has since clarified in *Francis Karioko Muruatetu & Another v Republic; Katiba Institute & 5 others (Amicus Curiae)* [2021] eKLR (Muruatetu 2) that the principles laid out in Muruatetu 1 applied only to murder cases under Sections 203 as read with Section 204 of the *Penal Code*. Therefore, the death sentence remains the lawful punishment for other capital offences including robbery with violence. Based on this legal framework, the respondent urged the court to uphold the sentence and dismiss the appeal, as it lacked merit.
6. The issue for determination in this appeal is whether the death sentence imposed on the appellant for the offence of robbery with violence was excessive or unlawful. The issue of mandatory death sentences was revisited by this Court way back in 2008 by a five Judge bench in the case of *Joseph Njuguna Mwaura & Others -Vs- Republic* (2008) KEHC 3435 (KLR). The Judges observed,

“We hold that the decision in *Godfrey - Vs- Republic* to be per incuriam in so far as it purports to grant discretion in Sentencing with regard to capital offences. Our reading of the law shows that the offences of murder contrary to Section 203 as read with section 204 of the *Penal Code*, treason contrary to section 40 of the *Penal Code*, robbery with violence contrary to section 296(2) of the *Penal Code* carry the mandatory Sentence of death”.
7. This restatement of the law requires no further exposition as it is self-explanatory. This appeal is no different.
8. Of course the appellant has relied heavily on (Muruatetu 1) which outlawed the mandatory nature of the death sentence imposed in murder cases. That by parity of reasoning the holding equally applied to the other capital offences. However, the Supreme Court clarified in Muruatetu 2, that the principles in Muruatetu 1 applied solely to murder cases. The Court stated:

“The decision in Muruatetu applies only in respect to sentences for murder under Sections 203 and 204 of the *Penal Code*. Courts remain bound by the mandatory sentences prescribed for other offences unless and until declared otherwise by the Supreme Court.”
9. The offence of robbery with violence therefore remains punishable by death as a mandatory sentence. While this Court acknowledges the evolving jurisprudence on sentencing, it is bound by the Supreme Court's determination in Muruatetu 2 which reverts the sentence of robbery with violence to the reasoning in *Joseph Njuguna Mwaura & Others -Vs- Republic* (supra).
10. The appellant also cited mitigating factors such as his youth, responsibilities, and demonstrated reform. While such factors may influence discretionary sentencing, they cannot override the explicit statutory provisions and binding precedent mandating the death penalty for robbery with violence.



11. We are therefore unable to interfere with the sentence meted out by the trial court and upheld by the High Court in this appeal.
12. Accordingly, this appeal is dismissed in its entirety.

DATED AND DELIVERED AT KISUMU THIS 13TH DAY OF JUNE, 2025.

ASIKE-MAKHANDIA

.....

JUDGE OF APPEAL

H. A. OMONDI

.....

JUDGE OF APPEAL

L. KIMARU

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR

