



**Likabo v Republic (Criminal Revision E250 of 2024)
[2025] KEHC 632 (KLR) (30 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 632 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL REVISION E250 OF 2024**

SC CHIRCHIR, J

JANUARY 30, 2025

**IN THE MATTER OF ARTICLES 2, 3 (A), 19 (2), 20 (1), 22(1), 23(1), 25(C), 26(1),
27(1) (4), 28, 50(2) (P) (Q) 159(2) AND 165(3) OF THE CONSTITUTION OF KENYA
AND IN THE MATTER OF CONSTITUTION OF KENYA (PROTECTION OF RIGHTS
AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES 2010**

AND

**IN THE MATTER OF SECTION 203 AS READ WITH SECTION 204
OF THE CRIMINAL PROCEDURE CODE CAP 75 LAWS OF KENYA**

**IN THE MATTER OF SECTION 216 AND 29 OF THE
CRIMINAL PROCEDURE CODE CAP 75 LAWS OF KENYA**

BETWEEN

JOSEPH LIKABO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Through the Notice of motion dated 27th May 2023 the applicant herein seeks for a revision of the death sentence meted to him in criminal case No 32 of 2005 at the High court in Kakamega following conviction on a murder charge.
2. The application is based on the grounds appearing on the face of the Application and supporting affidavit annexed thereto.
3. He states that the death sentence contravenes section 216 and 389 of the *Criminal Procedure Code* on mitigation and the values on sentencing as per the *Sentencing Policy Guidelines* of 2016 ; that pursuant



to Article 165(3)(b) of the Constitution , this court has the jurisdiction to make a determination on infringement of Rights.

4. The respondent did not file any response to the Application.

Determination

5. In the case of Francis Karioko Muruatetu & another v Republic (2017) eKLR the supreme court declared the mandatory death sentence for murder under Section 204 of the Penal Code to be unconstitutional for the reason that it deprived courts of the discretion to impose a sentence other than the death sentence in an appropriate case.
6. Further in Muruatetu & another v Republic; Katiba Institute & 4 others (Directions) [2021] KESC 31 (KLR) the same court issued directions on 6th July 2021 while revisiting the earlier decision and directed interalia that : All offenders who have been subject to the mandatory death penalty and desire to be heard on sentence will be entitled to re-sentencing hearing.
7. The court further directed that in re-hearing sentence for the charge of murder, both aggravating and mitigating factors such as the following will guide the court –
 - a. Age of the offender
 - b. Being a first offender
 - c. Whether the offender pleaded guilty.
 - d. Character and record of the offender
 - e. Commission of the offence in respect of gender based violence.
 - f. The manner in which the offence was committed on the victim.
 - g. The physical and psychological effect of the offence on the victim’s family.
 - h. Remorsefulness of the offender.
 - i. Possibility of reform and social adaptation of the offender.
 - j. Any other factor the court considers relevant.
 - k. Where the appellant has lodged an appeal against sentence alone, the appellate court will proceed to receive submissions on re-sentencing.
8. Am satisfied that following the aforesaid directions of the supreme court, and the circumstances of this case the Applicant herein is legible for review of his sentence.
9. Although the record shows that the Applicant was given a chance to mitigate, the Judge clearly stated, and rightly so, that the accused was being sentenced to death as by law established . The Applicant’s mitigation therefore was of no value in the then provisions of law.
10. Turning to the said mitigation, the Applicant as the then 1st Accused in the case, had told the court that he was 53 years old , had two wives and 9 children, whom he needed to take care of . He was remorseful and sought for leniency. The prosecutor told the court that the Applicant was a first offender. Remorse and being a first offender are both mitigating factors.



11. I have also considered the age of the Applicant. He was convicted at 53 years , that was in November 2010. He was charged on 9th September 2005. There is nothing on record to indicate that he was released on bail and therefore he has been in custody for a total of 19 years.
12. In view of what I have stated in paragraph 11 hereof , I turn to consider the purpose of punishment which include , among others, deterrence, rehabilitation and public protection. And I ask the question; at 67 years of age and having been in custody for the last 19 years , have the purpose of punishment been considerably achieved? is the Applicant still a threat to society? Has there been a chance for rehabilitation? Has the society been pacified?.
13. Am of the considered view that the purpose of the punishment has been achieved . The is no longer a threat to society. On reform, if he had the willingness for reform he ought to have reformed by now, but if not, any further incarceration will not make a difference .
14. In view of the foregoing, I consider the period served to be satisfactory, and consequently order that he set free forthwith, unless otherwise lawfully held.

DATED , SIGNED AND DELIVERED AT KAKAMEGA THIS 30TH DAY OF JANUARY 2025.

S. CHIRCHIR

JUDGE.

In the presence of :

Godwin Luyundi – Court Assistant.

The Applicant in person

Ms Kagai for the Respondent

