



REPUBLIC OF KENYA



**KENYA LAW**  
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**Omulama v Republic (Criminal Petition E007 of 2023)  
[2025] KEHC 652 (KLR) (30 January 2025) (Judgment)**

Neutral citation: [2025] KEHC 652 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VIHIGA  
CRIMINAL PETITION E007 OF 2023  
JN KAMAU, J  
JANUARY 30, 2025**

**BETWEEN**

**ELISHA MAIYA OMULAMA ..... PETITIONER**

**AND**

**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

**Introduction**

1. The Petitioner herein together with his Co-Accused were jointly charged and with the offence of robbery with violence contrary to Section 296(2) of the Penal Code Cap 63 (Laws of Kenya). This was in respect of a robbery that occurred on 10<sup>th</sup> March 2013.
2. On 11<sup>th</sup> April 2014, the Learned Trial Magistrate Hon G.A. Mmasi, Ag. P.M. tried and convicted him and his Co-Accused in Vihiga Criminal Case No. 544 of 2013 Republic vs Elisha Maiya Omulama & Charles Amboko Anemba. She sentenced them to death.
3. Being dissatisfied with the said decision, the Petitioner herein lodged an appeal in Kakamega HCCRA No 52 of 2014. His Co-Accused lodged Kakamega HCCRA No 51 of 2014. They were both consolidated and heard by Sitati and Mrima JJ. They dismissed both Appeals.
4. Being dissatisfied with the first appellate court's decision, the Petitioner herein lodged a second appeal at the Court of Appeal Criminal Case No 117 of 2015 Kisumu Anemba & Another vs Republic (Criminal Appeal 117 of 2017) [2023] KECA 339 (KLR) (17 March 2023) (Judgment). This appeal was equally dismissed on 17<sup>th</sup> March 2023.
5. In the present Notice of Motion application dated and filed on 28<sup>th</sup> April 2023, the Petitioner herein sought a review of the death sentence and relied on the Supreme Court decision that held that the mandatory death sentence under Section 204 of the Penal Code was unconstitutional.



6. He also sought that the sentences that he was given in Vihiga Criminal Case No 503 of 2013 Republic vs Elisha Maiya Omulama & Charles Amboko Anemba and Hamisi Criminal Case No 632 of 2013 Republic vs Elisha Maiya Omulama & Charles Amboko Anemba run concurrently. He pointed out that he was sentenced to fifteen (15) years imprisonment in Hamisi Criminal Case No 632 of 2013 and twenty (20) years in Vihiga Criminal Case No 503 of 2013 for the offences of robbery with violence which sentences he termed as having been excessive.
7. He submitted that the death sentence was found to have been unconstitutional in William Okungu Kittiny vs Republic [2018] eKLR. He asserted that the mandatory death sentence deprived courts their legitimate jurisdiction to exercise their discretion when meting out a sentence. He further relied on the case of Julius Kitsao Manyeso vs Republic (eKLR citation not given). He urged this court to observe the principle of stare decisis and declare his life imprisonment unconstitutional.
8. He further placed reliance on the case of Protus Buliba Shikuku vs Republic (eKLR citation not given) where it was held that the High Court had jurisdiction to redress a violation that arose from the operation of the law. He asked this court to interpret the law in a way that favoured his fundamental right to fair trial and to benefit from the least prescribed punishment. He was emphatic that he was entitled to equal protection, equal benefit of the law and non-discrimination.
9. He expressed remorse and asked this court to be lenient on him at the time of sentencing. He pointed out that he had been rehabilitated and that the period that he had spent in prison was sufficient for his rehabilitation. He also stated that he had undergone training in Bible. He attached his Certificates.
10. His undated Written Submissions were filed on 15<sup>th</sup> February 2024. Despite the Respondent having been given an opportunity to file its Written Submissions on 1<sup>st</sup> October 2024, it had not done so by 31<sup>st</sup> October 2024. This court checked the e-filing portal and did not see any Written Submissions. The Judgement herein is therefore based on the Petitioner's Written Submissions only that he relied upon in their entirety.

### **Legal Analysis**

11. Right from the outset, this court noted that the Petitioner intentionally failed to disclose material information. This court did due diligence by going through the Kenya Law Report Website where it obtained very critical information.
12. Notably, Sitati and Mrima JJ upheld the conviction and sentence of the Trial Court in Vihiga Criminal Case No 544 of 2013 Republic vs Elisha Maiya Omulama & Charles Amboko Anemba. in Kakamega HCCRA No 52 of 2014. In Criminal Appeal No 117 of 2017 Anemba & Another vs Republic (Criminal Appeal 117 of 2017) [2023] KECA 339 (KLR) (17 March 2023) (Judgment), the Court of Appeal Kisumu upheld the conviction and sentence of Sitati and Mrima JJ. It was evident from the Petitioner's Written Submissions that his death sentence was commuted to life imprisonment.
13. In its decision of 17<sup>th</sup> March 2023, the Court of Appeal rendered itself on the Ruling of the Supreme Court in the Francis Karioko Muruatetu case when it rendered itself as follows:-
 

“The Prosecution Counsel opposed this ground and fittingly pointed out that the Supreme Court in Muruatetu 2 was clear on the non-application of Muruatetu 1 to robbery with violence.”
14. Going further, Majanja J (as he then was) upheld the death sentence in in Vihiga Criminal Case No 503 of 2012 Republic vs Elisha Maiya Omulama & Charles Amboko Anemba. This was in respect of



a case of robbery with violence and gang rape that occurred on 20<sup>th</sup> December 2012. In its decision in *Omulama & Another vs Republic (Criminal Appeal 137 of 2015) [2023] KECA 43 (KLR) (3 February 2023)* (Judgment) which upheld Majanja J’s decision, the Court of Appeal stated as follows:-

“The death sentence remains in our books as a possible sentence for the offence of robbery with violence. The circumstances of this case are aggravated and the death sentence does not deserve review from us.”

15. The Petition herein related to Vihiga Criminal Case No 544 of 2013 Republic vs Elisha Maiya Omulama & Charles Amboko Anemba where the Court of Appeal had rendered its decision. In view of the hierarchical system of Kenyan courts, this court could not review a decision of a court which was above it.
16. It could not therefore substitute the life sentences the Petitioner was currently serving and give a determinate sentence in the cases emanating from Vihiga Criminal Case No 503 of 2013 Republic vs Elisha Maiya Omulama & Charles Amboko Anemba and Hamisi Criminal Case No 632 of 2013 Republic vs Elisha Maiya Omulama & Charles Amboko Anemba.
17. This is notwithstanding that another bench in the Court of Appeal had declared life imprisonment unconstitutional in *Manyeso v Republic (Criminal Appeal 12 of 2021) [2023] KECA 827 (KLR) (7 July 2023)* (Judgment). This is because this court was bound by the Court of Appeal decisions upholding the death sentences in Vihiga Criminal Case No 503 of 2013 Republic vs Elisha Maiya Omulama & Charles Amboko Anemba and Republic vs Elisha Maiya Omulama & Charles Amboko Anemba.
18. Indeed, the Court of Appeal had already pronounced itself on the non-applicability of the case of Francis Karioko Muruatetu in *Anemba & another v Republic (Criminal Appeal 117 of 2017) [2023] KECA 339 (KLR) (17 March 2023)* (Judgment) and upheld the death sentence in *Omulama & another v Republic (Criminal Appeal 137 of 2015) [2023] KECA 43 (KLR) (3 February 2023)* (Judgment).
19. The hierarchical nature of the courts prevented this court from reviewing the sentences that had been pronounced by the Court of Appeal. In any event, substitution of the life sentence herein with a determinate sentence in this case would be purely an academic exercise. Indeed, a determinate sentence could only be held in abeyance in view of the death sentences that were subsisting against the Appellant herein.
20. However, even if that there was no death sentence or indeterminate sentence that was imposed on the Petitioner herein, this court could still not have directed that the determinate sentences run concurrently as the different sentences were meted out by different courts for offences that occurred on different dates.
21. Notably, Section 14(1) of the Criminal Procedure Code Cap 75 (Laws of Kenya) states that:-

“Subject to subsection (3), when a person is convicted at one trial of two or more distinct offences, the court may sentence him, for those offences, to the several punishments prescribed therefor which the court is competent to impose;  
and those punishments when consisting of imprisonment shall commence the one after the expiration of the other in the order the court may direct, unless the court directs that the punishments shall run concurrently.”



22. In view of the nature of the sentences that the Petitioner herein was serving, the question of Section 333(2) of the Criminal Procedure Code which mandated that the period an accused person had stayed in custody while his trial was ongoing be considered was therefore rendered moot. The Petitioner was currently serving a life sentence that was indeterminate and hence no period could be deducted from the sentence that he was currently serving.

**Disposition**

23. For the foregoing reasons, the upshot of this court's decision was that the Petitioner's undated Petition that was lodged on 28<sup>th</sup> April 2023 was not merited and the same be and is hereby dismissed.
24. It is so ordered.

**DATED AND DELIVERED AT VIHIGA THIS 30<sup>TH</sup> DAY OF JANUARY 2025**

**J. KAMAU**

**JUDGE**

