



REPUBLIC OF KENYA



Wanyonyi & another v Republic (Miscellaneous Criminal Petition 66 of 2019 & E002 & E003 of 2024 (Consolidated)) [2025] KEHC 412 (KLR) (24 January 2025) (Ruling)

Neutral citation: [2025] KEHC 412 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
MISCELLANEOUS CRIMINAL PETITION 66 OF 2019
& E002 & E003 OF 2024 (CONSOLIDATED)**

WM MUSYOKA, J

JANUARY 24, 2025

BETWEEN

ROSELYN NABWIRE WANYONYI 1ST PETITIONER

VINCENT WANYAMA MAGERO 2ND PETITIONER

AND

REPUBLIC RESPONDENT

RULING

1. The petitioners herein had been convicted of robbery with violence, contrary to section 296(2) of the Penal Code, Cap 63, Laws of Kenya, and sentenced to death, in Busia CMCCRC No. 72 of 2001. There were also convictions on the alternative charge of handling stolen goods, in respect of which they were sentenced to definite terms of imprisonment.
2. They filed appeals at the High Court, being Busia HCCRA Nos. 31 and 47 of 2003. Both appeals were dismissed, in a judgment, by a bench of 2 Judges, delivered on 2nd July 2008.
3. Thereafter, they filed a further appeal at the Court of Appeal, being Kisumu CACRA No. 108 of 2008. The same was dismissed on the conviction on the robbery with violence and theft charges but was allowed on the alternative charge. The effect was that the death sentence for the robbery with violence charge, and the term of imprisonment for theft were upheld.
4. The petitioners aver that the death sentences were commuted to life imprisonment, by the President of the Republic in 2003.
5. The petitioners have come forward, arguing that the said sentences imposed, of life imprisonment were unconstitutional, and they seek a re-hearing for the purposes of re-sentencing.



6. These proceedings are misconceived. Upon being convicted, the appellants exercised their rights of appeal, at the High Court and at the Court of Appeal. Their convictions for robbery with violence were affirmed, and the sentences were upheld. If they were unhappy with the outcome at the Court of Appeal, they should have gone on or proceeded to the Supreme Court, to challenge that outcome. They cannot possibly come back to the High Court, which is subordinate to the Court of Appeal, and which cannot review a decision of that higher court. The arguments that they now raise could have been properly raised at the Court of Appeal and determined.
7. Secondly, these petitions challenge the decisions of the trial court, the High Court, and the Court of Appeal, on the basis that the sentences imposed on them, of death, were unconstitutional. Those sentences are no longer hanging over their heads. They were commuted by the President in 2003. They are no longer available for execution, and the petitioners run no risk of being hanged to death in execution of those sentences.
8. Thirdly, they appear to have come to court based on *Francis Karioko Muruatetu & another v Republic* [2017] eKLR (Maraga CJ&P, Mwilu DCJ&VP, Ojwang, Wanjala, Njoki & Lenaola, SCJJ). The Supreme Court has since 2017, when the *Francis Karioko Muruatetu & another v Republic* [2017] eKLR (Maraga CJ&P, Mwilu DCJ&VP, Ojwang, Wanjala, Njoki & Lenaola, SCJJ) decision was delivered, explained, in a number of other decisions, such as *Francis Karioko Muruatetu & another v Republic; Katiba Institute & 5 others (Amicus Curiae)* [2021] eKLR (Koome CJ&P, Mwilu DCJ&VP, Ibrahim, Wanjala, Njoki, Lenaola & Ouko, SCJJ) and *Republic v Mwangi; Initiative for Strategic Litigation in Africa (ISLA) & 3 others (Amicus Curiae)* [2024] KESC 34 (KLR) (Koome, CJ, Ibrahim, Wanjala, Ndung'u & Lenaola, SCJJ) that that decision only applied to the offence of murder, and that the death penalty remained constitutional for all other offences.
9. In view of the above, there can be no merit in the petitions herein, and I do hereby dismiss them. The 3 files herein shall be closed.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA THIS 24TH DAY OF JANUARY 2025.

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Ms. Roselyne Nabwire Wanyonyi, the 1st petitioner, in person.

Mr. Stephen Wesonga Magero, the 2nd petitioner, in person.

Advocates

Mr. Onanda Antony, instructed by the Director of Public Prosecutions, for the respondent.

