



REPUBLIC OF KENYA



**Karanja v Republic (Miscellaneous Criminal Application
144 of 2019) [2025] KEHC 3185 (KLR) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 3185 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS CRIMINAL APPLICATION 144 OF 2019**

E OMINDE, J

FEBRUARY 27, 2025

BETWEEN

RAMADHAN KARANJA PETITIONER

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant was charged and convicted of 2 counts of the offence of robbery with violence and one count of rape on his own plea of guilty on 17th October 2001 in Eldoret Principal Magistrates' Criminal Case No 6526 of 2001.
2. Being dissatisfied with the conviction and sentence, he appealed vide Eldoret High Court Criminal Appeal No 116 of 2001. The court considered his appeal and determined that the plea of guilt was unequivocal and that the provisions of Section 207(1) and (2) of the *Criminal Procedure Code* were complied with. The appeal was dismissed for lack of merit vide the judgment of the High Court delivered on 21st January 2002.
3. The applicant then approached this court vide a Notice of Motion dated 26th October 2018 seeking, in a nutshell, resentencing. In the said Application he seeks for a resentencing hearing on the grounds as laid out in his Affidavit in support of the Application that the applicant was not granted a fair trial on sentencing by the High Court in contravention of Article 50(2)(q) of the *Constitution* and further, that he has not exhausted all appeals.
4. The applicant cited the following cases in support of his Application.
 - i. *Francis Karioko Muruatetu & another v Republic* (Supreme Court Petition No 15 of 2015)
 - ii. *Douglas Muthaura Ntoribi v Republic* Meru HCMISCAPPL No 4 of 2015
 - iii. *John Nganga Gacheru & another v Republic* HCCRC No 31 of 2016



- iv. *William Okungu Kittiny v Republic* Kisumu COA No 2 of 2011
5. In his affidavit in support of the application, he intimated to the court that the death sentence meted out to him had been commuted to a life sentence by the president and prayed that the application be allowed.
6. The Application was prosecuted by way of written submissions.

Applicant's submissions

7. The applicant submitted that the death sentence imposed on him by the trial court and upheld by the High Court is inconsistent with Article 50 (2) (h) and (p) of the *Constitution* and Section 329 of the *Penal Code*. Additionally, he stated that he wanted the court to declare that Section 296 (2) of the *Penal Code* is inconsistent with Articles 26 (1), (2), 28, 48, 50 (1), (2) (p) of the *Constitution*.
8. The applicant submitted that the right to a fair trial is a fundamental right and additionally, that Article 10 of the *Declaration of Human Rights* makes it one of the inalienable rights. He urged that Article 20(3)(4) of the *Constitution* demands that when courts are applying a provision on the bill of rights, they must develop the law in a manner that adopts the enforcement that most favours the enforcement of the right to a fundamental freedom.
9. He submitted that Section 332(3) of the *Criminal Procedure Code* is in contravention with Article 131(1)(e) and the *Sentencing Guidelines* 2016. Further, that the fact that his sentence is at the mercy of the president and not the courts, the same is bad law in contravention of Article 159(1) of the *Constitution*. He urged that Kenya is a signatory to the *International Covenant on Civil and Political Rights* and cited the provisions of Article 14 of the Covenant, submitting that the death sentence failed to meet the international principles set out therein.
10. He further submitted that his mitigation was not considered since under Section 296(2) of the *Penal Code*, the trial magistrate does not possess any discretion and has to award the sentence prescribed. Additionally, that this contravened the provisions of Section 216 and 329 of the *Criminal Procedure Code*. He cited the case of *Edwin Odhiambo v Republic* (2009) eKLR in support of this submission.
11. The applicant prayed that the court awards him a sentence that gives him an opportunity for reintegration into society. He cited the case of *Julius Kitsao Manyeso v Republic* – Criminal Appeal No 12 of 2021 in support of his submission.
12. The applicant maintained that he was a young man influenced by his peers into the commission of the offence and further, that he was forced to commit the offence as he was faced with poverty and peer pressure. He expressed regret for the commission of the offence and urged the court to appreciate that he is aging and needs a family and to help his parents. He urged that he has been in custody for 23 years and undergone rehabilitation programmes which have transformed his life in all dimensions.
13. He urged the court to consider the time he spent in custody since the date of arrest as per the provisions of Section 333(2) of the *Criminal Procedure Code*. He cited the case of *Abamad Abolfathi Mohammed & another v Republic* (2018) eKLR in support of this submission and prayed that the court takes into account the proportionality of the sentence citing the case of *Ali Abdalla Mwanza v Republic* (Criminal Appeal No 259 of 2012 in support of this submission.
14. The applicant urged the court to make a declaration of time already served as his sentence or, in the alternative, a sentence that the court deems fair just and reasonable. If the court was inclined to declare a custodial sentence more than the time served, he prayed that he be allowed to serve the remaining time under probation.



Respondents' submissions

15. Learned counsel for the state, S. G Thuo, filed submissions dated 16th December 2024. He submitted that the state was vehemently opposed to the application. He cited Section 348 of the [Penal Code](#) that provides that no appeal shall be allowed in the case where a person has pleaded guilty to an offence and has been convicted by a subordinate court, except as to the extent and legality of that sentence.
16. Counsel submitted that the applicant cannot rely on the authority in *Muruatetu* as during his mitigation he retorted that he had no mitigation to make. Further, that the applicant's punishment was appropriate given the offence he committed. He referred the court to the procedure for plea under Sections 201(1) and (2) of the [Criminal Procedure Code](#), urging that they were fully complied with to wit; that the charges were read to the petitioner in a language he understood and the facts were also read to him. He admitted to the same and was cautioned of the consequences of his admission and still insisted on his plea of guilt.
17. Counsel urged that the applicant has misinformed the court that he spent time in custody which was not factored into the sentence as he was sentenced on the day he was presented in court. He cited the case of [Republic v Joshua Gichuki Mwangi & others](#) – Supreme Court Petition No E018 of 2023 dated 12th July 2024 which affirmed that the apex court did not invalidate mandatory maximum and minimum sentences. He urged the court to dismiss the application and uphold the sentence.

Analysis & Determination

18. The Supreme Court of Kenya in the case of [Samuel Kamau Macharia & another v Kenya Commercial Bank Ltd & 2 others](#), Application No 2 of 2011:

A court's jurisdiction flows from either the [Constitution](#) or legislation or both. Thus, a court can only exercise jurisdiction as conferred by the [Constitution](#) or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law..."
19. The Court is satisfied that by dint of Articles 22(1), 23(1), 50(2)(p) &(q), 159(1) and 165(3)(b) of the [Constitution](#) cited by the Applicant, that it has the requisite jurisdiction to handle this Application as envisaged in the above decision of the Supreme Court.
20. Having addressed my mind to the Application, the submissions filed by the petitioner as well as the submissions filed by the Counsel for the State, and being satisfied that this Court has the requisite jurisdiction to handle this Application, it is my considered opinion the provisions of the law that are relevant to this Application are as hereunder;
21. Article 23(1) of the [Constitution](#) which provides as follows: -

The High Court has jurisdiction, in accordance with Article 165, to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights.'
22. Article 50(2)(p) &(q) of the [Constitution](#) which provides as follows;
 - (2) Every accused person has the right to a fair trial, which includes the right
 - (p) to the benefit of the least severe of the prescribed punishments for an offence, if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing; and



- (q) if convicted, to appeal to, or apply for review by, a higher court as prescribed by law.
23. Section 348 of the [Criminal Procedure Code](#) which provides as follows;
- No appeal on plea of guilty, nor in petty cases No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court, except as to the extent or legality of the sentence
24. Section 333(2) of the [Criminal Procedure Code](#) which provides as follows:
- Subject to the provisions of Section 38 of the [Penal Code](#), every sentence shall be deemed to commence from and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this Code.
- Provided that where the person sentenced under sub section (1) has prior, to such sentence shall take account of the period spent in custody.”
25. Given the above then, what the Court then needs to determine is whether the Application satisfies any of the parameters of the law as above set out. In considering this, the Court notes the following. The applicant moved the court seeking a resentencing. As clearly stated at paragraph 5 of his Application, he seeks a resentencing because in his view he was not accorded a fair hearing in his sentencing by the High Court in contravention of Article 50(2)(p) of the [Constitution](#). He relied on the decision in [Francis Karioko Muruatetu & another v Republic](#) (Supreme Court Petition No 15 of 2015 among others.
26. In his submissions, he states that after the Supreme Court rendered itself in the [Muruatetu case](#) (*supra*), it subsequently issued a clarification in a 2nd rendition of the Muruatetu that the 1st decision applied to murder cases only. That for this reason, he was now petitioning the Court to find that the death sentence meted out to him in the Robbery with Violence case was unconstitutional and further that even the commutation of the same to life imprisonment is also unconstitutional for reasons that the President does not have any power to sentence since that is the preserve of the Courts.
27. He therefore seeks that the court finds that the death sentence is unconstitutional for the reasons given as herein already summarised and sentence him to a less severe sentence. Further, relying on the decision of the Court of Appeal in [Julius Kitsao Manyeso v Republic](#) – Criminal Appeal No 12 of 2021, he prays that the Court finds that the life imprisonment to which his sentence was commuted is also unconstitutional
28. In considering the prayers sought, what is clear is that this is not a Petition in any sense of the meaning of a Petition. It is an Application for resentencing. It follows therefore that Article 23(1) of the [Constitution](#) is not applicable. The applicable provision of the law in this case then are Article 50(2)(p) &(q) of the [Constitution](#) and Section 348 of the [Criminal Procedure Code](#) on the legality of the sentence the question then that the Court would need to answer is whether this application has satisfied the conditions of this Article.
29. Article 50(2)(p) can only be applicable if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing. This is not the case here. As the applicant himself noted in his submissions, after the clarification by the Supreme Court that its decision in Muruatetu is applicable in murder cases only, the punishment for Robbery with Violence contrary to Section 296(2) of the [Penal Code](#) as provided by the law remained as the death penalty. It follows therefore that the prescribed penalty for the offence having not changed, this Article of the [Constitution](#) is not applicable



30. On the applicant's reliance on Article 50(2)(q), my interpretation of the said Article is that this Court having considered and upheld both the conviction and the sentence of the applicant by the Subordinate Court, the applicant can now only seek recourse under this Article to a Higher Court and not this Court. It follows therefore that the legality of the sentence meted out as envisaged under Section 348 of the CPC too has also already been considered by this Court and upheld and so this provision too is not available.
31. On the prayer that the period that the accused spent in remand custody be considered under Section 333(2) of the *Criminal Procedure Code*, the Court has taken into account the fact that the accused was arraigned in Court, he pleaded guilty and was immediately thereafter sentenced. There was therefore no trial and consequently no period spent in custody during trial to be considered. The application under this provision too is therefore also not available to the applicant.
32. Lastly on the reliance on the Court of Appeal decision seeking that his life sentence be commuted for the reasons given, my simple finding is that that decision involves a case of defilement under the *Sexual Offences Act* No 3 of 2006 and is therefore not applicable to this case.
33. The upshot from the above is that I uphold the submissions by the Prosecution and find that the applicant's application is misconceived and lacks merit and the same is dismissed in its entirety.
34. Right of Appeal 14 days

READ DATED AND SIGNED AT ELDORET ON 27TH FEBRUARY 2025.

E. OMINDE

JUDGE

