



**Langat v Republic (Miscellaneous Criminal Application
E001 of 2024) [2025] KEHC 6604 (KLR) (26 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 6604 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
MISCELLANEOUS CRIMINAL APPLICATION E001 OF 2024**

JN KAMAU, J

FEBRUARY 26, 2025

BETWEEN

GILBERT KIPKOECH LANGAT APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Introduction

1. The Applicant herein was charged with two (2) counts of the offence of robbery with violence contrary to Section 296(2) of the [Penal Code](#). He was convicted and sentenced to death.
2. Being aggrieved by the said decision, he lodged an appeal in Kakamega HCCA No 41 of 2009 whereby the court upheld both his conviction and sentence.
3. On 15th January 2024, he filed Notice of Motion application dated 7th October 2023 seeking a review of his sentence. He contended that this court had the jurisdiction to hear and determine his application as provided for under Article 163(3)(b) of [the Constitution](#) of Kenya, 2010. He prayed for a lenient, least severe and definite sentence.
4. His Written Submissions were dated 24th June 2024 and filed on 26th June 2024 while those of the Respondent were dated 14th November 2024. They did not bear a court stamp. However, in view of the fact that documents were being filed through the e-filing platform, this court admitted the same as there was a likelihood of the Registry may have omitted to stamp the same. The Ruling herein is based on the said Written Submissions which both parties relied upon in their entirety.

Legal Analysis

5. The Applicant submitted that the mandatory death sentence infringed the principles of fair trial as provided under Article 50 and 25 (c) of [the Constitution](#) of Kenya, 2010. He argued that it disregarded



- the individual circumstances of each case and failed to appreciate the tenets of fair trial which included mitigation and sentencing as well. He added that the same also worked contrary to the principle of separation of powers as enshrined under Article 160 of *the Constitution*.
6. He placed reliance on the case of Ramadhan Salim Shaban & Others vs Republic Criminal Petition No 5 of 2020 (eKLR citation not given) where it was held that the death sentence under Section 296(2) of the *Criminal Procedure Code* was unconstitutional. In that regard, he urged the court to exercise its discretion and quash the death sentence and substitute it with a determinate sentence.
 7. He also submitted that life sentence was also indeterminate, degrading, harsh, disproportional, demeaning and inhuman contrary to Article 28 of *the Constitution* of Kenya, 2010. To buttress his point, he relied on the case of Makumbi Subui Wanyeso vs Republic Criminal Appeal No 110 of 2022 (eKLR citation not given) where it was held that if a prisoner was incarcerated without any prospect of release and without the possibility of having his life sentence reviewed, then there was risk that he would never atone for his offence.
 8. He pleaded with this court to consider that he was a first offender and remorseful of the events that led to the offence. He also urged the court to take into account the period of twenty (20) years he served in prison which he termed sufficient to meet the legitimate penological grounds for detention being punishment, deterrence, public protection and rehabilitation. He pointed out that he was socially re-adapted and was ready to be re-integrated back to the society.
 9. He further submitted that he was abled differently as his right leg from the knee downwards had been amputated. He asserted that he was very young when he was imprisoned and he therefore risked ageing in prison if the relief he sought was not be granted. He prayed that his indeterminate sentence be substituted with a least severe one and preferably the time he had already served in prison.
 10. He pleaded with the court to consider Section 333(2) of the *Criminal Procedure Code* while reviewing his sentence and placed reliance on the case of Wilson Kibor vs Republic (eKLR citation not given) where it was held that sentences should run from the date of arrest.
 11. This court was unable to trace the case of Ramadhan Salim Shaban & Others vs Republic Criminal Petition No 5 of 2020 (Supra) that the Applicant herein relied upon, in the Kenya Law Reports Website.
 12. On its part, the Respondent submitted that the Applicant's argument that the minimum mandatory death sentence for murder under Section 296(2) of the *Penal Code* was unconstitutional on the grounds that it did not allow for judicial discretion was baseless as the said penalty served an important public policy objective which was deterrence against the heinous crime of robbery with violence.
 13. It placed reliance on the case of Francis Karioko Muruatetu & Another vs Republic [2017] eKLR and argued that the court's decision therein was specific to the crime of murder and not robbery with violence. It asserted that the Applicant's sentence was befitting as per the gravity of the offence and should thus be upheld.
 14. It invoked Article 28 of *the Constitution* of Kenya and argued that an indeterminate sentence would not in itself violate constitutional principles. It added that while the said Article protected individuals from inhuman or degrading treatment, the protection did not extend to imposition of lawful sentences.
 15. It further invoked Sections 216, 329 and 333(2) of the *Criminal Procedure Code* and submitted that courts could allow applications for reduction of sentences based on mitigation and to consider the time spent in custody but that that was not automatic as there were other factors to be considered which



included the seriousness of the crime, the harm caused to the victim and the need for deterrence. It urged the court to dismiss the Applicant's application for lack of merit.

16. Notably, Section 296 (1) and (2) of the *Penal Code* provides as follows:-
 1. Any person who commits the felony of robbery is liable to imprisonment for fourteen years.
 2. If the offender is armed with any dangerous or offensive weapon or instrument, or is in company with one or more other person or persons, or if, at or immediately before or immediately after the time of the robbery, he wounds, beats, strikes or uses any other personal violence to any person, he shall be sentenced to death.
17. The Applicant herein was convicted for the offence of robbery with violence. This court could not therefore fault the Trial Court for having imposed on him the death sentence as that is what was provided under the law.
18. This court took cognisance of the fact that after the Supreme Court delivered its decision *Muruatetu & Another vs Republic: Katiba Institute & 5 Others (Amicus Curiae) (Petition No 15 & 16 of 2015) (Consolidated)[2017] KESC 2 (KLR) (14 December hereinafter 2017)* (referred to as "Muruatetu I"), jurisprudence emerged wherein the mandatory minimum sentences was deemed to have been unconstitutional. Courts exercised their discretion to depart from the minimum mandatory sentences and re-sentenced applicants for different offences, including robbery with violence.
19. In its guidelines that it gave on 6th July 2021 in what came to be known as "Muruatetu II", the Supreme Court directed that *Muruatetu I* was only applicable to murder cases. It rendered itself as follows:-

"To clear the confusion that exists with regard to the mandatory death sentence in offences other than murder, we direct in respect of other capital offences such as treason under section 40 (3), robbery with violence under section 296 (2), and attempted robbery with violence under section 297 (2) of the *Penal Code*, that a challenge on the constitutional validity of the mandatory death penalty in such cases should be properly filed, presented, and fully argued before the High Court and escalated to the Court of Appeal, if necessary, at which a similar outcome as that in this case may be reached. *Muruatetu* as it now stands cannot directly be applicable to those cases."
20. The said case therefore became inapplicable herein as the Applicant herein had been charged and convicted for the offence of robbery with violence and not murder as was emphasised by the Supreme Court in its aforesaid guidelines.
21. The directions that were given by the Supreme Court in *Muruatetu II* were clear enough that the validity of the mandatory nature of the death penalty prescribed for other capital offences, including robbery with violence under Section 296(2) of the *Penal Code* could and should be challenged separately.
22. It was on that basis that this court addressed its mind to the mandatory nature of death sentence in robbery with violence cases, the aspects of mitigation and re-sentencing and consideration of the time spent in remand in Vihiga Petition No E002 of 2024 consolidated with Petition No E003 of 2024 *Stephen Njau Mbugua & 10 Others vs Attorney General & Another*.
23. In its decision on 24th February 2025, this vey court found and held that although the death sentence was not unconstitutional, the mandatory death sentence and not been granted an opportunity to mitigate as contemplated in Sections 216 and 329 of the *Criminal Procedure Code* Cap 75 (Laws of Kenya) and to benefit from the period persons who had been convicted of the offence of robbery with



- violence and attempted robbery with violence under Sections 296(2) and 297(2) of the Penal Code Cap 63 (Laws of Kenya) had remained in custody while their trial was ongoing as provided in Section 333(2) of the Criminal Procedure Code contrary to Article 27(1) of the Constitution of Kenya, 2010.
24. Article 27 (1) of the Constitution of Kenya was clear that:-
- “Every person is equal before the law and has the right to equal protection of the law and equal benefit before the law.”
25. It also found that the life imprisonment violated the dignity of convicts of murder cases contrary to the provisions of Article 28 of the Constitution of Kenya. Indeed, Article 28 of the Constitution of Kenya provides that:-
- “Every person has inherent dignity and the right to have that dignity respected and protected.”
26. As the application herein was a subject of Section 296(1) of the Penal Code on the offence of robbery with violence whose mitigating circumstances were impeded by the mandatory nature of sentence under Section 296 (2) of the Penal Code which prescribed death sentence as the only punishment, the mandatory nature of the sentence was unconstitutional as it was discriminative in nature. This application therefore constituted a valid challenge as contemplated by the Supreme Court in *Muruatetu II*.
27. In *Petition No E002 of 2024 consolidated with Petition No E003 of 2024 Stephen Njau Mbugua & 10 Others vs Attorney General & Another (Supra)* rendered itself as follows for those who had already been convicted:-
- “86. For those who had been convicted and did not have the benefit of mitigating before being sentenced such as the Petitioners herein, they had a reprieve in Article 50(2) of the Constitution of Kenya which sets out some of the principles that were considered to constitute fair trial. One of these principles was the right to lodge an appeal or apply for review in a higher court, if convicted as stipulated in Article 50 (2) (q) of the Constitution of Kenya.
87. Such mitigation, which would include the behaviour while in prison and proof of reformation and possibility of reintegration in the society which would enable an appellate and/or review court have a holistic view of the case. During appeal or review of a case, a higher court would have had all the facts and circumstances of the accused on record to enable it assess the appropriate sentence in case there was merit for a sentence reduction.”
28. It is important to point out that sentence reduction was not automatic and was influenced by the mitigating factors. As the Applicant herein could not be sent back to the trial court due to passage of time, the case having been concluded in 2008, this court could review the sentence based on his behaviour while he was in prison, the efforts he had made to reform and the possibility of his being reintegrated in the society.
29. As this information was not available to this court, this court found it prudent to give the Applicant an opportunity to produce the same before this court could consider his mitigation for re-sentencing, if at all.



Disposition

30. For the foregoing reasons, the upshot of this court's decision in respect of the Applicant's Notice of Motion application that was dated October 7, 2023 and lodged on January 15, 2024, be and is hereby deferred to enable him furnish this court with documents in support of his mitigation.
31. Towards this end, the Applicant be and is hereby directed to file documents in support of his mitigation by April 30, 2025.
32. It is hereby directed that this matter will be mentioned on May 29, 2025 to confirm compliance and/or for further orders and/or directions.
33. It is so ordered.

DATED AND DELIVERED AT VIHIGA THIS 26TH DAY OF FEBRUARY 2025

J. KAMAU

JUDGE

