



**Waweru v Republic (Miscellaneous Criminal Application
E016 of 2025) [2025] KEHC 5114 (KLR) (30 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5114 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT KAJIADO
MISCELLANEOUS CRIMINAL APPLICATION E016 OF 2025
CW MEOLI, J
APRIL 30, 2025
IN THE MATTER OF CRC NO. 93 OF 2000 SRM'S COURT AT KAJIADO
AND
IN THE MATTERS OF HCCRA NO. 541 OF 2000 AT NAIROBI
AND
IN THE MATTERS OF C.O.A CRA NO. 8 OF 2006 AT NAIROBI
AND
IN THE MATTERS OF ARTICLE, 25 (C), 27, 28, 50(2)
(P), 50(2) (Q), 165(3)(A), 159(1) (A,B,D) COK, 2010
AND
IN THE MATTERS OF SECTION 26(2), 296(2) OF THE PENAL CODE
AND
IN THE MATTERS OF SECTION 323, 329, 216, 333 (2)
CRIMINAL PROCEDURE CODE CAP 75 LAW OF KENYA
AND
IN THE MATTERS OF PARAGRAPH 4.8
SENTENCING POLICY GUIDELINES REVISED 2023
AND
IN THE MATTERS OF ROBBERY WITH VIOLENCE C/S 296 (2) OF THE PENAL CODE

BETWEEN
JOSEPH KIMONDO WAWERU APPLICANT

AND
REPUBLIC RESPONDENT



RULING

1. A perusal of the application seeking revision of sentence, dated 10th March 2025, reveals the following facts:
2. The Applicant Joseph Kimondo Waweru was on 11th May 2000 convicted and sentenced for the offence of Robbery with Violence contrary to Section 296(2) of the Penal Code in Kajiado Chief Magistrate’s Criminal Case No. 93 of 2000. The Applicant subsequently appealed to the High Court in Nairobi HCCRA 541 OF 2000 and thereafter to the Court of Appeal in CRA No. 8 of 2006. Both appeals were unsuccessful. The death sentence, however, was subsequently commuted to a life imprisonment, which is ongoing.
3. The Applicant has now applied to this court seeking revision of his sentence which he terms as unconstitutional, citing inter alia, the Court of Appeal decision in Manyeso V. Republic CRA No. 12 of 2021 (2023) KECA 827 (KLR). In that case, the Court of Appeal held that the sentence of life imprisonment amounted to cruel and degrading treatment due to its indefinite nature. Thus, it reduced the life sentence to 40years imprisonment.
4. That decision was recently considered by the Supreme Court in Republic Versus Evans Nyamari Ayako Petition No. E002 of 2024. In the Nyamari Case, the appellant had challenged a similar decision by the Court of Appeal where the sentence of life imprisonment was substituted with a 30year imprisonment term for the offence of Defilement Contrary to Section 8(1) as read with Section 8(2) of the Sexual Offences Act .
5. The Supreme Court found that the constitutionality of the sentence of life imprisonment had not been raised before the High Court, in the first instance as required, before it was canvassed in the appeal before the Court of Appeal. The Supreme Court concluded by stating that:

“In the circumstances, we agree with the appellant that the Court of Appeal assumed original jurisdiction over the interpretation and application of the Constitution, a mandate of the High Court under Article 165(3) (d) of the Constitution..... the High Court has the mandate to interpret the Constitution, while the Court of Appeal and Supreme Court have appellate jurisdiction over the same matters, having been resolved by the High Court at first instance. Equally, in Republic Vs. Mwangi Case (Supra) we held that before courts can consider the constitutionality or legality of minimum sentences and mandatory sentences, the issue must first have been canvassed and escalated through the proper channels.”
6. The court further referring to its earlier case christened Muruatetu II stated that “the rationale in Muruatetu I case was only applicable to mandatory death penalty for the offence of murder under Section 203 as read with 204 of the Penal Code. Further we disabused the notion that the rationale could be applied as is to other offences with a mandatory or minimum sentence.”
7. In the present case, the Applicant has exhausted his right of appeal before the High Court and Court of Appeal. This court would therefore have no jurisdiction to entertain an application for revision of his sentence for that reason alone.
8. Secondly, the Applicant was convicted for the offence of robbery with violence contrary to Section 296 (2) of the Penal Code which offence, according to the decision of the Supreme Court cited above, was not envisaged in its decisions in Muruatetu I and Muruatetu II.



9. In the circumstances, the court declines jurisdiction in respect of the motion dated 10th March 2025 and will strike it out accordingly. This decision/order to be uploaded on the Case Tracking System (CTS)

DATED, SIGNED AND DELIVERED AT KAJIADO THIS 30TH DAY OF APRIL 2025.

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C. MEOLI

JUDGE

