



REPUBLIC OF KENYA



**Mbori v Republic (Miscellaneous Application 325 of 2019)
[2025] KEHC 6028 (KLR) (Civ) (28 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 6028 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL**

MISCELLANEOUS APPLICATION 325 OF 2019

AM MUTETI, J

APRIL 28, 2025

BETWEEN

JOSEPH JUMA MBORI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant in this matter was charged with murder.
2. The information read that on 15th May 1990 at Raini Trading Centre Karuri Division Kiambu District of Central Province the accused murdered Titus Waithaka Karuga.
3. The accused was tried and convicted by Justice Mango on 22nd January 1992 and sentenced to suffer death.
4. He preferred an appeal being Criminal Appeal No. 6 of 1992 *Joseph Juma Mbori v. Republic* which was heard and determined by Gicheru, Omolo & Shah, JJA who dismissed the appeal on 22nd May 1998.
5. The applicant has come to this court pleading with the court to consider resentencing him.
6. The applicant argues that even though the death sentence has since been commuted to life imprisonment, the sentence of life imprisonment is indeterminate and he should be sentenced to definite period of imprisonment.
7. The applicant contends that his long stint in prison has changed him and he now realizes his mistake and he is remorseful.
8. The applicant has been in prison custody for over 33 years and he has pleaded for forgiveness.



9. The application was argued before this court on 26/2/2025 before this court reserved it for a ruling.
10. Ms. Ogega prosecution counsel urged the court to consider exercising its discretion on the issue of sentence since the prevailing jurisprudence at the time favored the imposition of a determinate term of imprisonment flowing from court of Appeal decisions that had affirmed the unconstitutionality of the indeterminate life sentence.
11. However, since that time , times have changed and jurisprudence on life sentence has been enriched.
12. The Supreme Court in Petition No. E002 of 2024 *Republic v Evans Nyamari Ayako* stated:-

“.....we therefore held that while life imprisonment ought not necessarily mean a prisoner’s natural life, it is for the legislature to prescribe what constitutes life imprisonment and the parameters applicable, if at all. In that connection we did, as the Supreme Court , recommend that the Attorney General and Parliament ought to commence an enquiry on this issue and develop legislation on what constitutes life sentence.”
13. The Supreme Court noted that since their recommendation is in *Muruatetu 1* had not been acted upon by the state law office and parliament, the 30 years imprisonment set by the court of Appeal as life imprisonment was arbitrarily arrived at and the court went ahead to reinstate the High Court decision in restoring life sentence as provided for under statute.
14. It follows therefore that since the applicant before me is serving a life sentence this court cannot substitute the sentence for a determinate period.
15. The sentence of life imprisonment remains lawful and constitutional.
16. The ball is squarely in the court of the Hon. Attorney General and Parliament.
17. It is a matter that in the opinion of this court should receive urgent attention to determine with finality – what constitutes life imprisonment.
18. The application by the present applicant therefore fails.
19. It is however important for this court to observe that the courts of this country are presently inundated with resentencing applications thus the need to have the Attorney General and parliament while at it to consider whether it, is time to grade murder in this country into degrees as is the case in other jurisdictions notably the United States of America. I say so because this country has continued to grapple with the issue of death sentence and what exactly should be the category of cases that should attract death sentence as the only sentence.
20. In the instant case the court of Appeal observed :

“ we have pointed out that the death was brutal. It is clear from the postmortem report that the deceased was strangled. We cannot subscribe to the theory of manslaughter propounded by Mr. Mogikoyo.”

It is thus necessary for parliament to guide the courts on the appropriate sentence in respect of cases that present varied degrees of brutality.
21. Needless to say, with the rise in murder incidents today, a robust public discourse on these issues is called for. The seriousness of the murder should be discernible right at plea stage and that categorization into 1st, 2nd and 3rd degree murder would be important in sentencing.



22. In the end for the reasons stated above, the applicant's application is dismissed.

23. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 28TH DAY OF APRIL 2025.

A. M. MUTETI

JUDGE

In the presence of:

Court Assistant: Kiptoo

In person for the Applicant

Ms Ogega for the Respondent

