



**Wangu v Republic (Miscellaneous Criminal Application  
E007 of 2024) [2025] KEHC 7203 (KLR) (29 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7203 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
MISCELLANEOUS CRIMINAL APPLICATION E007 OF 2024**

**EM MURIITHI, J**

**MAY 29, 2025**

**BETWEEN**

**JACOB MWANGI WANGU ..... APPLICANT**

**AND**

**REPUBLIC ..... PROSECUTION**

**RULING**

1. The applicant was charged with the offence of Robbery with Violence contrary to section 296 (2) of the *Penal Code*. The particulars of the offence are that on 25<sup>th</sup> January, 2010 at a road near African Millers in Mwea, Kirinyaga South District within Central province jointly with others not before the court while armed with dangerous weapons namely pangas, axe and metal pipe robbed Francis Tsimonjero seventy-nine bags of paddy rice valued at Kshs.474,000 and at the time of such robbery killed him.
2. Upon full trial, he was convicted and sentenced to death on 10<sup>th</sup> March, 2011.
3. He lodged an appeal vide Criminal Appeal No. 31 of 2017 and the appeal was dismissed. He filed a resentencing application No. 26 of 2019 his life sentence was substituted with 30 years' imprisonment.
4. The applicant seeks non-custodial sentence for the remainder of his period stating that he has been rehabilitated while in prison. Lastly, he urges that he is 62 years old and his family and friends are willing to support him in restarting his life.
5. The prosecution submits that the applicant should demonstrate that he has reformed and the skills that he has acquired so far.
6. The prison report dated 8<sup>th</sup> May, 2024 states that the applicant has engaged in life skills and spiritual based rehabilitation. He is 62 years and has maintained a clean record as he has never been charged with any offence within prison.



## Issue

7. Whether the applicant is entitled to reduction of the sentence.

## Analysis

8. The applicant was charged with the offence of Robbery with Violence contrary to section 296 (2) of the *Penal Code*. He is serving a 30 years' prison term. The applicant seeks remission of his 30 years' sentence. He has been in prison for 14 years.
9. In Ibrahim Onyango Omondi vs. Republic (2020) eKLR, the court held that the power to remit a sentence rests with the prison authorities under section 46(1) of the *Prisons Act*.
10. Section 46(1) of the *Prisons Act* provides:
  46. Remission of sentence  
Convicted criminal prisoners sentenced to imprisonment, whether by one sentence or consecutive sentences, for a period exceeding one month, may by industry and good conduct earn a remission of one-third of their sentence or sentences.  
Provided that in no case shall —
    - a. any remission granted result in the release of a prisoner until he has served one calendar month;
    - (b) any remission be granted to a prisoner sentenced to imprisonment for life or for an offence under section 296(1) of the Penal code or to be detained during the President's pleasure.
11. The Petitioner urge by virtue of Section 46 of the *Prisons Act* he is entitled to benefit from 1/3 of the Sentence. See Ismael Mzee Ismael v Attorney General & another [2021] eKLR.
12. The prison report dated 8<sup>th</sup> May, 2024 indicates that the applicant has maintained a clean record while in custody for 14 years. With remission of 1/3 of his 30 year sentence, he should serve imprisonment for twenty years. The reduction of the death sentence to a sentence for a term of years has now been outlawed by the Supreme Court in the Directions in Muruatetu II case as regards offences other than murder contrary to section 203 as read with 204 of the *Penal Code*.
13. As explained in the Supreme Court's recent decision on the applicability of the Muruatetu Case in relation to mandatory and minimum sentences in sexual offences in Republic v Ayako (Petition E002 of 2024) [2025] KESC 20 (KLR) (11 April 2025) (Judgment):
  52. In the Muruatetu II Case we reiterated that the rationale in the Muruatetu I Case was only applicable to the 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.
  53. In the Republic vs Mwangi Case, we explained as follows:
    - “(52) We therefore find that in this matter the Court of Appeal did offend the principle of stare decisis. Notably, we observe that the Court of Appeal determined that the ratio decidendi in the Muruatetu Case on the unconstitutionality of mandatory sentences could be applied mutatis mutandis to the mandatory nature of minimum sentences provided for in the *Sexual*



Offences Act. In doing so, and with respect, the Court of Appeal failed to abide by the clear principles provided in both the Muruatetu case and the Muruatetu directions in this instance.”

54. It is therefore abundantly clear that it was not open to the Court of Appeal to apply the ratio decidendi in Muruatetu I in the instant matter. Therefore, to the extent that the Court of Appeal did so, it has offended the principle of stare decisis.

Similarly in Republic v Manyeso (Petition E013 of 2024) [2025] KESC 16 (KLR) (11 April 2025) (Judgment) the Supreme Court said:

62. In the Muruatetu Directions, this Court pronounced itself on the application of the ratio in the Muruatetu case to other statutes prescribing mandatory sentences as follows:

“10. It has been argued in justifying this state of affairs, that, by paragraph 48 of the Judgement in this matter, or indeed the spirit of the Judgement as a whole, the court has outlawed all mandatory and minimum sentence provisions; and that although Muruatetu specifically dealt with the mandatory death sentence in respect of murder, the decision’s expansive reasoning can be applied to other offenses that prescribe mandatory or minimum sentences. Far from it.

11. The ratio decidendi in the decision was summarized as follows:

“69. Consequently, we find that section 204 of the Penal Code is inconsistent with the Constitution and invalid to the extent that it provides for the mandatory death sentence for murder. For the avoidance of doubt, this decision does not outlaw the death penalty, which is still applicable as a discretionary maximum punishment”.

We therefore reiterate that, this court’s decision in Muruatetu, did not invalidate mandatory sentences or minimum sentences in the Penal Code, the Sexual Offences Act or any other statute.”

14. It should be apparent from the foregoing that Muruatetu cannot be the authority for stating that all provisions of the law prescribing mandatory or minimum sentences are inconsistent with the Constitution. It bears restating that it was a decision involving the two petitioners who approached the court for specific reliefs. The ultimate determination was confined to the issues presented by the petitioners, and as framed by the court.” [Emphasis added]”

14. Fortunately, the applicant in this case had his death sentence reduced to an imprisonment term for 30 years.

## Orders

15. Accordingly, for the reasons set out above, the petition for reduction of the sentence of 30 years imposed herein on the applicant is declined.
16. Of course, as counselled in Muruatetu & another v Republic; Katiba Institute & 4 others (Amicus Curiae) (Petition 15 & 16 of 2015) [2021] KESC 31 (KLR) (6 July 2021) (Directions) (Muruatetu II), the applicant is at liberty to petition for a declaration of unconstitutionality of the death sentence in



cases of robbery with violence under section 296 (2) of the Penal Code in a petition brought in that behalf in the words of the Supreme Court:

“ 15. 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.”

17. File Closed.

Order Accordingly.

**DATED AND DELIVERED THIS 29<sup>TH</sup> DAY OF MAY 2025.**

**EDWARD M. MURIITHI**

**JUDGE**

Appearances:

Mr. Mamba for DPP.

Applicant in person.

