



REPUBLIC OF KENYA



KENYA LAW
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**Gakuya v Republic (Criminal Petition E005 of 2025)
[2025] KEHC 9086 (KLR) (24 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 9086 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL PETITION E005 OF 2025**

**DR KAVEDZA, J
JUNE 24, 2025**

BETWEEN

ANTONY WAWERU GAKUYA PETITIONER

AND

REPUBLIC RESPONDENT

JUDGMENT

1. The Petitioner was convicted of the offence of robbery with violence contrary to Section 296(2) of the *Penal Code* in Kibera Chief Magistrate's Court Criminal Case No. 3615 of 2009 and sentenced to death. His appeals before the High Court and the Court of Appeal were both dismissed.
2. Following the Supreme Court's decision in Francis Karioko Muruatetu & Another v Republic [2017] eKLR (Muruatetu I), the Petitioner's case was remitted to the trial court for re-sentencing. After considering his mitigation, the trial court substituted the death sentence with life imprisonment.
3. The Petitioner has now filed the present petition dated 29th April 2025 seeking a further resentencing, citing the fact that he has been in custody for 17 years and argues that this period has allowed for full rehabilitation.
4. The decision in Muruatetu I was limited in scope. It declared the mandatory nature of the death penalty unconstitutional, allowing for re-sentencing in cases where no mitigation was considered. It did not abolish the death penalty, nor did it create an open-ended right to challenge a discretionary sentence subsequently imposed by the trial court after full mitigation was taken into account.
5. In this case, the Petitioner's mitigation was heard by the trial court, which exercised discretion and substituted the death sentence with life imprisonment. That process fully satisfied the requirements set by the Supreme Court in Muruatetu I.



6. There is no legal provision allowing for a second review or appeal against the lesser sentence imposed during a Muruatetu-based resentencing. Once the trial court exercised its discretion and passed sentence following mitigation, the matter was settled. To allow repeated resentencing would be to stretch the holding in Muruatetu I beyond its intended scope.
7. Furthermore, the Court's role is to assess culpability and impose sentence accordingly. Considerations such as rehabilitation and reform while serving sentence fall within the mandate of the Power of Mercy Advisory Committee under Article 133 of *the Constitution* and not within the sentencing jurisdiction of the courts.
8. In the result, the petition is without merit and is hereby dismissed.

Orders accordingly.

JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 24TH DAY OF JUNE 2025.

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D. KAVEDZA

JUDGE

In the presence of:

Petitioner Present

Mutuma for the Respondent

Tonny Court Assistant

