



**Lokut v Republic (Criminal Revision E010 of 2024)  
[2025] KEHC 11312 (KLR) (Crim) (30 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11312 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ISIOLO  
CRIMINAL  
CRIMINAL REVISION E010 OF 2024  
SC CHIRCHIR, J  
JULY 30, 2025**

**BETWEEN**

**MICHAEL LOZORU LOKUT ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The petitioner was charged, tried and convicted at the Chief Magistrate’s Court in Isiolo with the offence of Robbery with Violence under criminal case No. 136 of 2011, and sentenced to death. He moved to the high court on Appeal and the appeal was dismissed. He has moved to this court seeking for a review of sentence.

**The Applicant’s case**

2. The Applicant states that he has suffered behind bars; has appreciated the consequences of crime and seeks for a non- custodial sentence ; that the trial court ought not to have sentenced him to suffer death as the death sentence has since been declared unconstitutional. He finally states that he has brought his Application under Article 50(2), and 51(2) of the *Constitution*.

**The Respondent’s case**

3. In response the Respondent has stated that the Application is resjudicata as the Applicant had previously filed a similar Application, being Petition No. 106 of 2018 at Meru High court. The respondent further states that there is no law providing for resentencing in kenya ; that this court has no jurisdiction to hear the instant Application as a court of equal jurisdiction has already expressed itself on the matter. It is finally submitted that ,in any event , the Applicant is no longer under death



sentence since all death sentences were commuted to life sentence by the president through gazette Notice No. 9566 of 19/7/2023.

#### **Determination**

4. I have considered the parties' rival submissions and identified the following issues for determination:
  - a). Whether the instant Application is res judicata
  - b). Whether the petitioner is currently under death sentence .
  - c). Whether this court has jurisdiction to hear this Application

#### **Whether the present Application is res judicata**

5. The Respondent has argued that the Applicant had filed a similar Application before the high court in Meru , and therefore the present Application offends the principle of res judicata. However save to provide the case number ,the respondent has not submitted in evidence a copy of such Application. This court therefore has no basis upon which it can decide on the plea of *resjudicata*

#### **Whether the Applicant is serving death sentence**

6. The Applicant has argued that he ought not to have been condemned to suffer death as the sentence of death has been declared unconstitutional.
7. However , the factual position , as is submitted by the respondent is that, the Applicant's death sentence has since been vacated by virtue of Gazette Notice No. 9566 of 19/7/2023. The said Gazette Notice states : - "it is notified for general information to the public that in exercise of powers conferred by Article 133 of the Constitution of Kenya under section 23(1) of the Power of Mercy Act 2011 the President and commander in Chief of the Defence Forces of the Republic of Kenya , upon recommendation of the advisory committee on the power of mercy commuted the death sentence imposed on every capital offence as at 21.1122 to life sentence. "
8. The lower court record shows that the Applicant was sentenced to death on 19/10/2011. He thereafter lost an appeal before the high court in Meru. On 21.7.23 the president, pursuant to the powers bestowed on him under Article 133 of the Constitution, published the above stated notice , in which he commuted all death sentences that had been imposed as at 21.11.22, to life sentences. The Applicant herein was sentenced prior to 21/11/2022 and therefore he was among the convicts whose death sentence was commuted to life imprisonment. Further it suffices to state that contrary to the Applicant's assertion , death sentence is constitutional.
9. In the circumstances the Applicant's Application is moot.

#### **Whether this court has jurisdiction in any event**

10. The Applicant's appeal was heard before the high court in Meru. This court has no supervisory powers over superior courts or courts with concurrent jurisdiction. The high court had dealt with the matter and this court has therefore become functus officio.
11. In conclusion for want of incompetence ,and lack of jurisdiction by this court, the Applicant's Application is hereby struck off.

**DATED, SIGNED AND DELIVERED AT ISIOLO, THIS 30<sup>TH</sup> DAY OF JULY, 2025.**

**S. CHIRCHIR**



**JUDGE.**

In the presence of :

Roba Katelo- Court Assistant.

Michael lozuru Lokuy- Applicant

Mr. Ngetich – For the Respondent

