



REPUBLIC OF KENYA



**Muroki v Director of Public Prosecutions (Petition E092 of 2023)
[2024] KEHC 1707 (KLR) (22 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1707 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
PETITION E092 OF 2023
TW CHERERE, J
FEBRUARY 22, 2024**

BETWEEN

LUKA MWITHALIE MUROKI PETITIONER

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS RESPONDENT

RULING

1. Petitioner was charged with murder in Meru High Court Criminal Case No. 21 of 2014 and was convicted and sentenced to serve 25 years imprisonment. He did not appeal his conviction and sentence.
2. Petitioner seeks resentence on the ground that the sentence is harsh and excessive.
3. Ms. Rita for the DPP opposed the application on the grounds that the victim suffered serious injuries and Petitioner was used a dangerous weapon to commit the murder.
4. In *Bernard Kimani Gacheru v Republic* [2002] eKLR, the Court of Appeal stated thus:

“It is now settled law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with the sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account, some wrong material, or acted on a wrong principle. Even if, the Appellate Court feels that the sentence is heavy and that the Appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, anyone of the matters already stated is shown to exist. (See also *Wanjema v. Republic* [1971] E.A.493.”



5. The Petitioner's claim that the sentence is excessive is within the jurisdiction of the Court of Appeal to consider.
6. Since this court cannot sit on appeal in the judgment of a judge of concurrent jurisdiction, the Petition for resentence is disallowed.

DELIVERED AT MERU THIS 22ND DAY OF FEBRUARY 2024

WAMAE. T. W. CHERERE

JUDGE

Appearances

Court Assistants - Kinoti/Munene

Petitioner - Present in person

For DPP - Ms. Rita (PC- 1)

