



**Bao v Republic (Miscellaneous Criminal Application E105 of 2023)
[2024] KEHC 4088 (KLR) (15 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 4088 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS CRIMINAL APPLICATION E105 OF 2023**

**A. ONG'INJO, J
MARCH 15, 2024**

BETWEEN

KYALO NGUTHU BAO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant Kyalo Nguthu Bao was charged with the robbery with violence in Mombasa Chief Magistrate Court CR. Case No. 799 of 2011. He was convicted and sentenced to serve life imprisonment on 23rd July 2013.
2. He preferred an Appeal in CR. A. No. 128 of 2013 but the lower court proceedings were not availed and on 29th July 2019 Hon. E.K. Ogola J ordered that the court would take administrative action on the matter by trying to locate the lower court proceedings upto 29/05/2023 the lower court proceedings had not been availed. The Applicant therefore opted to withdraw the appeal.
3. Subsequently he filed the application herein seeking that his mitigation be considered before he is re-sentenced. He urged the court to apply the principle set out in Muruatetu by the Supreme Court.
4. The Applicant argued that he had been in prison for about 10 years from 23rd July 2013 and 2 years in remand. He said he was 25 years at the time that he committed the offence and that he is remorseful.
5. This court called for Sentence Review Report which was filed on 16/11/2023 and it was recommended that the applicant be placed to work on Community Service at DCC Katulani under supervision of Assistant County Commissioner.
6. This Court is cognizant of the fact that life sentence has since been declared unconstitutional in the Julius Kitsao Manyeso case by the Court of Appeal at Malindi and therefore the same is set aside and being that offence for which the applicant was convicted is a capital offence for which maximum



penalty is death sentence, I do hereby substitute the life imprisonment with 20 years jail term to take effect from date of arrest in 2011.

DATED, SIGNED AND DELIVERED IN OPEN COURT/ONLINE THROUGH MS TEAMS,

THIS 15TH DAY OF MARCH 2024

HON. LADY JUSTICE A. ONG'INJO

JUDGE

In the presence of: -

Etropia - Court Assistant

Mr. Ngiri for the Respondent

HON. LADY JUSTICE A. ONG'INJO

JUDGE

