



**Gongo v Republic (Miscellaneous Criminal Application  
E102 of 2023) [2024] KEHC 3199 (KLR) (15 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 3199 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
MISCELLANEOUS CRIMINAL APPLICATION E102 OF 2023**

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

**BETWEEN**

**OMAR MWINYI GONGO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant Omar Mwinyi Gongo was charged and convicted for the offence of robbery with violence in Mombasa CMC Cr. C. No. 3292 of 2009. He was sentenced to suffer death which was later commuted to life imprisonment. Hearing of the applicant's appeal in Mombasa H. C. Cr. A. No. 481 of 2010 did not proceed because the lower court file could not be traced since the appeal was filed.
2. The applicant withdrew the appeal in Mombasa H. C. Cr. A. No. 481 of 2010 to pursue the application herein for review of his sentence.
3. The applicant now seeks that this court factors the remand period in his sentence and considers his mitigation as follows: -
  - a. That he was a first offender.
  - b. That he was aged 21 years at the time he committed the offence and showed remorse ahead of his sentence by the trial court.
  - c. That he has been in the prison facility for a period of over 14 years with considerably good reputation.
4. The Sentence Review Report by Mwanajuma Mzee, Probation Officer 1 from Kisauni Sub-County and filed on 22<sup>nd</sup> November 2023 was to the effect that the applicant has a supportive family that is ready to receive him back and have plans in place for his reintegration. It is recommended that the court considers placing him on non-custodial sentence of 3 years probation.



5. This court has considered the Sentence Review Report as well as the applicant's age at the time of commission of the offence and the years so far served and hereby sets aside the life imprisonment which has been declared unconstitutional in the Court of Appeal case of *Julius Kitsao Manyeso v Republic* [2020] eKLR where it was held that imposition of a mandatory indeterminate life sentence, is an unjustifiable discrimination, unfair and repugnant to the principle of equality before the law under Article 27 of the *Constitution*.
6. To that end, life imprisonment is substituted with 25 years imprisonment to take effect from 8<sup>th</sup> November 2010 pursuant to Section 333(2) of the *Criminal Procedure Code*. The remainder of the sentence to be served on probation for 3 years.

**DATED, SIGNED AND DELIVERED IN OPEN COURT/ONLINE THROUGH MS TEAMS THIS  
15<sup>TH</sup> DAY OF MARCH 2024**

**HON. LADY JUSTICE A. ONG'INJO**

**JUDGE**

In the presence of: -

Etropia- Court Assistant

Mr. Ngiri for the Respondent

Applicant present in person

