



**Mwashigadi v Republic (Miscellaneous Criminal Application
E114 of 2023) [2024] KEHC 2810 (KLR) (15 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2810 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS CRIMINAL APPLICATION E114 OF 2023**

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

BETWEEN

BRIGHTON JUMA MWASHIGADI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant Brighton Juma Mwashigadi was charged and convicted for the offence of robbery with violence in Mombasa CMC CRC No. 3789 of 2011. He was sentenced to suffer death which was later commuted to life imprisonment. Hearing of the applicant's appeal in Mombasa HCCRA No. 73 of 2014 did not proceed because the lower court file could not be traced.
2. The applicant withdrew the appeal in Mombasa HCCRA No. 73 of 2014 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 37 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 13 years with considerably good reputation.
4. The Sentence Review Report by Asha Gozi, Kisauni Probation Officer and filed on 22nd November 2023 was to the effect that the applicant has a supportive family that is willing to assist with his resettlement. She recommended that the sentence can be reviewed downwards.



5. This court has considered the sentence review report 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 hereby set aside and substituted thereof with 30 years imprisonment to take effect from 9th December 2011 pursuant to Section 333(2) of the *Criminal Procedure Code*.

**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

Applicant present in person

HON. LADY JUSTICE A. ONG'INJO

JUDGE

