



REPUBLIC OF KENYA



**Mwacharo v Republic (Miscellaneous Criminal Application  
E112 of 2023) [2024] KEHC 6282 (KLR) (30 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 6282 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
MISCELLANEOUS CRIMINAL APPLICATION E112 OF 2023**

**A. ONG'INJO, J**

**MAY 30, 2024**

**BETWEEN**

**BAKARI YASIN MWACHARO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant Bakari Yasin Mwacharo was charged and convicted for the offence of robbery with violence in Mombasa CMC Cr. C. No. 1347 of 2010 and Kwale CMC Cr. C. No. 1210 of 2010. He was then sentenced to life imprisonment. Hearing of the applicant's appeal in Mombasa HC Cr. A. No. 166 of 2011 did not proceed because the lower court file could not be traced since filing of the appeal.
2. The applicant withdrew the appeal in Mombasa HC Cr. A. No. 166 of 2011 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 17 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 Josiah Asande, Senior Probation Officer, Kisauni dated 7<sup>th</sup> November 2023 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. That this will also allow the



family to actively get involved in taking care of the inmate's medical needs. It is recommended that the court considers placing him on non-custodial sentence of 3 years probation where the inmate can be supervised by the nearby Msambweni Probation Office.

5. In considered the Sentence Review Report, the applicant's age at the time of commission of the offence and the years served, this court 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 30 years imprisonment to take effect from 7<sup>th</sup> July 2011 pursuant to Section 333(2) of the *Criminal Procedure Code*. The last 3 years of sentence to be served on probation.

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

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

.....

**JUDGE**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

In the presence of: -

Etropia- Court Assistant

Mr. Ngiri for the Respondent

Applicant present in person

