



**Ndung'u v Republic (Miscellaneous Criminal Application
E100 of 2023) [2024] KEHC 6289 (KLR) (30 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 6289 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS CRIMINAL APPLICATION E100 OF 2023**

A. ONG'INJO, J

MAY 30, 2024

BETWEEN

JOHN MAIYO NDUNG'U APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant John Maiyo Ndung'u was charged and convicted for the offence of robbery with violence in Mombasa CMC Cr. C. No. 2628 of 2010 then sentenced to death which was commuted to life imprisonment in 2016. Hearing of the applicant's appeal in Mombasa H. C. Cr. A. No. 8 of 2017 did not proceed because the lower court file could not be traced.
2. The applicant withdrew the appeal in Mombasa H. C. Cr. A. No. 8 of 2017 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 31 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 Roseline Auma - Probation Officer dated 10th November 2023 and filed on 22nd November 2023 was to the effect that the applicant has plans to relocate to his rural home in Limuru where his mother and siblings are. That his mother and community are ready to receive him back, and the siblings have shown willingness to support him get a welding machine to



be able to continue with his skills. It is recommended that the court considers reviewing his sentence to a lenient one including consideration for a non-custodial sentence and that the applicant to be placed on probation under supervision as he has chest problems that would not allow him to perform community service.

5. In consideration of the Sentence Review Report, 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 1st September 2010 pursuant to Section 333(2) of the *Criminal Procedure Code* when arraigned in court. The last 3 years of the sentence to be served on probation under supervision to ensure he does not relapse into crime.

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

HON. LADY JUSTICE A. ONG'INJO

JUDGE

In the presence of: -

Etropia- Court Assistant

Mr. Ngiri for the Respondent

Applicant present in person

