



**Ogolla v Republic (Criminal Petition E007 of 2021)  
[2022] KEHC 10464 (KLR) (24 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 10464 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CRIMINAL PETITION E007 OF 2021  
WM MUSYOKA, J  
JUNE 24, 2022**

**BETWEEN**

**CHRISPINUS OGOLLA ..... PETITIONER**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The petitioner herein seeks review of his sentence so that he can serve the balance of it under probation.
2. Firstly, I doubt whether the court has mandate to interfere with imprisonment sentences where the convicts are still serving, and no questions as legality or violation of rights have arisen. The execution of sentences is the function of the Executive, and where the prison authorities are of the opinion that the prisoner has reformed sufficiently to be released on probation or to serve community service or otherwise, it would still be the function of the Executive to make those determinations, and to direct that process. The courts have no role there unless invited by the Executive, like the High Court is usually invited to assist in decongesting the prisons, by revising sentences. The Executive has not invited me to do that in this case, and I would be crossing the line if I purport to revise sentence in the manner proposed.
3. Secondly, looking at the facts, the applicant had apparently committed a far more serious offence, but was convicted of the lesser offence. He had been charged under section 296(2) of the *Penal Code*, Cap 63, Laws of Kenya, but he was convicted of and sentenced for simple robbery, which is defined under section 295 of the Penal Code. Even after he was convicted of the lesser offence, he still benefitted from a lenient sentence. See the judgment of Ogola J. in Kakamega HCCRA No. 187 of 2018, lodged by the applicant herein. He literally got away with murder, and should not, in my view, benefit from any non-custodial measures at the tail end of his prison sentence.



4. Thirdly, he argues that he has reformed sufficiently to benefit from non-custodial measures. Whether or not there has been reformation can only be certified by the persons or agencies under whose custody the applicant has been. There is no report of any kind from the Kenya Prison Service to vouch for the alleged reformation of the applicant to warrant his being considered for non-custodial measures.
5. The only thing that may be considered in his favour is what is required under section 333(4) of the *Criminal Procedure Code*, Cap 75, Laws of Kenya; consideration of the period spent in remand custody, in computing the custodial sentence. The applicant was admitted to bond, but it appears that he never met the terms, and remained in custody throughout the trial. He was charged on 21<sup>st</sup> November 2017 and was sentenced on 6<sup>th</sup> December 2018. Let that period of one year and fifteen days be taken into account, by way of deduction from the ten years awarded by the court. It is so ordered
6. Let a certified copy of the ruling be served on the Kenya Prisons Service; and on the applicant and the Director of Public Prosecutions.

**DELIVERED, DATED AND SIGNED AT KAKAMEGA ON THIS 24th DAY OF JUNE 2022**

**WM MUSYOKA**

**JUDGE**

Erick Zalo, Court Assistant.

Chrispinus Ogolla Mutachi alias Obara, the petitioner, in person.

Mr. Mwangi, instructed by the Director of Public Prosecutions, for the respondent.

