



**Muthoni v Republic (Miscellaneous Criminal Application
E007 of 2025) [2025] KEHC 4463 (KLR) (3 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4463 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKADARA
MISCELLANEOUS CRIMINAL APPLICATION E007 OF 2025**

J WAKIAGA, J

APRIL 3, 2025

BETWEEN

VERONICA WAMBUI MUTHONI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged tried and convicted on two counts of being in possession of a passport without proper account contrary to section 54(d) as read with section 54(2) of the [Kenya Citizen and Immigration Act](#) for which she was fined Kenya shillings one million (kshs 1,000,0000) in default two(2) years imprisonment and unlawfully being in possession of another person's identity card contrary to section 14 (f) of the [Registration of Persons Act](#) Cap 107 laws of Kenya for which she was sentenced to a fine of Kenya shillings seventy thousand (kshs 70,000) in default eight (8) months imprisonment, which sentences were to run concurrently.
2. For record purposes, she was acquitted on the charge of trafficking persons contrary to section 3(1) as read with section 3(5) of the [Counter trafficking in persons Act](#) no 8 of 2010 and interfering with travel documents contrary to section 8(a) of the [Counter trafficking in persons Act](#)
3. By an application filed in person under certificate of urgency she sought for a community service under the Provisions of section 3 of [Community service Order Act](#) as read with section 4 of the [Probation of offenders Act](#) to be read in a manner that comply with United Nations Minimum Rules for Non-Custodial Measures (Tokyo) rules
4. The application was supported by her affidavit in which she deposed that she was arrested in 2018 and sentenced on 5th December 2024 thus rehabilitated and reformed to be integrated back in society being a mother of two minors aged 17 and 15 years respectively.



5. In response to the application , the state filed written submissions in which it was contended that the applicant was out on bond through out the period of her trial and had not served a substantial part of her sentence to warrant review of sentence.
6. It was submitted that sentence was an exercise of the trial court and this court shall not interfere with the same unless it is shown that in passing the sentence the court took into account an irrelevant factor or that a wrong principle was applied or that the sentence was excessive and harsh as was stated in *Shadrack Kipchoge Kogo v Republic*.
7. Ms Kariuki for the State however conceded that the fine on count 4 was unlawful as the maximum fine provided for under the statute is Kenya shillings fifteen thousand (kshs 15,000)
8. The applicant as they always do state that she was seeking mercy from the court and that she should be sentenced to six months on the account that she was with the documents as part of an Agency who was supposed to take the owners for foreign employment.

Determination

9. Sentence review in the criminal justice in Kenya is at a confused state which ought to be liberated from the shackles of confusion by an appropriate practise directions to be issued by the Chief Justice, otherwise as it stand the High Court will always remain hostage of many applications fashioned in different names and invoking different jurisdictions of the court thereby leading to contentious back lock with the court spending its time dealing with those who have had their day in court rather than those who are currently having their matter pending before it.
10. This state of affairs started with the Muruatetu one when the supreme court introduced the term sentence re-hearing before the same was clarified as only limited to murder in Muruatetu 2 (directions) where the court stated that the decision could not be applied to other offences that prescribe mandatory or minimum sentences .
11. The Supreme Court in *Republic v Mwangi and Others* [2024] KESC 34 (KLR) further at paragraph 57 set out the guiding principles on minimum sentences as opposed to mandatory sentence on then following terms

"mandatory sentences leave the trial court with absolute no discretion such that upon conviction, the singular sentence is already prescribed by law. Minimum sentences however set the floor rather than the ceiling when it comes to sentence. What is prescribed is the least severe sentence a court can issue, leaving it open to the discretion of the courts to impose a harsher sentence. In fact , to use the words mandatory and minimum together convolutes the express different definition given to each of the two words. Although the term mandatory minimum can be found used in different jurisdictions including the United State and in a number of academic articles, it is not applicable as a legally recognised term in Kenya. In this country a mandatory sentence and minimum sentence can neither be used interchangeably nor in similar circumstances as they refer to two very different set of meanings and circumstances

67. We must also reaffirm that, although sentencing is an exercise of judicial discretion, it is parliament and not judiciary that sets the parameter of sentencing for each crime in statute. As such striking down a sentence provided for in statute, must be based not only on evidence and sound legal principles but on an in-depth consideration of public interest and principles of public law that informed the making of that specific law. A judicial



decision of that nature cannot be based on private opinions, sentiments, sympathy or benevolence. It ought not to be arbitrary whimsical or capricious. However, where a sentence is set by in statute , the legislature has already determined the course, unless it is declared unconstitutional , based on sound principles and clear guidelines, upon which the legislature should then act. Suffice to say, where parliament enacts legislation, the judicial arm should adjudicate disputes based on the provision of the law. However, in the special circumstances of a declaration of unconstitutionality, the process is reversed “ .

12. My reading of the Supreme Court decision herein is that courts ought to be slow in interfering with the sentences imposed by statute and in as much I might not agree with them, they have sent a warning to all lower courts to abide with the decisions of the courts above them however unpopular the decision is.
13. The applicant herein has moved the court under the provisions of prison de -congestions, which is a one-off jurisdiction and not a permanent one to be exercised by the court in its normal operations and the list of which is generated from prison.
14. The question for this court’s consideration is whether the applicant has satisfied the conditions upon which the court may exercise the said special jurisdiction while being alive to the provision Articles 159 ?
14. This case from the facts and from the application on record does not fall within the categories of cases where the court ought to exercise its special jurisdiction under either prison decongestion and or the revision of sentence under the community service order as the offence the same was charged with does not fall within those that are covered by the Act.
15. As submitted by the respondent, the applicant has not served substantial part of her sentence, the same having been sentenced on 5th December 2024 16. I have however noted the offence that was proven by the prosecution and the pre-sentencing report and while being a live to the Supreme Court decisions herein above, I have come to the conclusion that this was a suitable case for the court to exercise its discretion by granting the applicant none custodial sentence.
17. The applicant was charged in the year 2018 and the matter has been pending before the court since then during which period of time the status of the applicant has substantially changed. The applicant has offered some explanation of the circumstances under which she came into possessions of the said passports and Identification card, and whereas this court is not sitting on appeal, I have taken into account several factors including the age of the applicant and her widowhood.
18. I would allow the application herein and convert the remaining term to probation sentence during which the applicant shall be rehabilitated and reintegrated into society on condition that should she be charged with as similar offense, then she shall first serve the unexpired sentence herein converted into probation in custody before commencement of the fresh sentence.
19. This ruling is only limited to the special circumstance of the applicant .

DATED SIGNED AND DELIVERED AT MAKADARA THIS 3rd DAY OF APRIL 2025

J WAKIAGA

JUDGE

In the presence of:

Miss Kariuki for respondent



The applicant in person.

