



**Muoki v Republic (Criminal Revision E011 of 2025)  
[2025] KEHC 6475 (KLR) (15 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6475 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
CRIMINAL REVISION E011 OF 2025**

**EN MAINA, J**

**MAY 15, 2025**

**BETWEEN**

**MUTIO MUOKI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. This a ruling the Applicant's undated Notice of Motion filed herein on 13<sup>th</sup> February 2025, brought under Sections 362 and 364 of the *Criminal Procedure Code* and Articles 25 (c), 27(1), 50(p) and 165 (6) of *the Constitution*. Basically, the application is one for reduction or review of the Applicant's sentence so that she serves the remainder of the term, which is two years, out of prison.
2. The Applicant was charged, convicted and subsequently sentenced to a term of imprisonment for twenty years on 18<sup>th</sup> September 2018. It is not very clear from the record but she alleges that the sentence was thereafter reviewed under Section 333(2) of the *Criminal Procedure Code* and now only two years and two months of the sentence remains. The said section obligates a court which is sentencing an accused person to take into account the time that accused person may have spent in remand custody. It is instructive that in sentencing the Applicant the Judge did consider that she and her co-accused had been in remand custody. The only ruling I see in her file is one dated 12<sup>th</sup> October 2020 where Kemei J dismissed her application for review of the sentence filed vide HCCR Misc App No 12 of 2020.
3. Be that as it may, the Applicant has now urged this court to release her in view of its programme decongest prisons. The gravamen of her application is that she is a single mother of adult children the youngest of who is not mentally sound and needs her total attention. Further, that she is 74 years old and has undergone rehabilitation for the last 10 years and that her health is deteriorating fast due to old age. In support of her application she has caused a probation officer's report to be filed. The report is favourable to her application.



4. I have carefully considered the application, the affidavit in support, the submissions, the court record and the law. The application is one where this court is urged to exercise its discretion in order for the accused person to benefit from an early release from prison. The exercise of such discretion must always be within the law and it is for that reason that even the decongestion exercise is done within certain parameters. For one the offence should not be a serious one; must be one where the accused was sentenced to three years and below or if sentenced to more than three years the remainder of the term is three years and below. The Applicant herein was charged with a serious offence which would not qualify for the decongestion exercise. Moreover, the accused has herself intimated to this court that she has already benefited from review of her sentence in order to take into account the period she spent in remand during the trial. This despite that Kemei J had already done that when sentencing the accused and indeed he rejected her application for review made before him. This is a court of concurrent jurisdiction which cannot sit on appeal or review the ruling of Kemei J. The prudent thing would have been for the Applicant to appeal or seek review in the Court of Appeal or better still in view of her age to petition the Power of Mercy Committee for a pardon pursuant to the President's Power of Mercy under Article 133 of *the Constitution*.
5. The sections cited by the Applicant relate to the powers of this court over courts below it but do not vest it with power over courts of concurrent jurisdiction and in the premises the application is dismissed.

**RULING SIGNED, DATED AND DELIVERED VIRTUALLY ON THIS 15<sup>TH</sup> DAY OF MAY 2025.**

**E N MAINA**

**JUDGE**

In Presence Of:

Ms Kaburu for the State.

The Applicant in person.

Miriam Court Assistant.

