



**Ruto v Republic (Miscellaneous Criminal Application
E220 of 2024) [2025] KEHC 5698 (KLR) (8 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5698 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MISCELLANEOUS CRIMINAL APPLICATION E220 OF 2024**

PN GICHOHI, J

MAY 8, 2025

BETWEEN

NICKSON KIPCHIRCHIR RUTO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant herein has moved this Court by way of a Notice of Motion dated 11th November 2024 and filed on 12th November 2024 seeking Orders that he serves the remainder of his sentence under probation.
2. His application is based on Section 4 of the *Probation of Offenders Act* Cap 64 laws of Kenya, Article 165 of *the Constitution* and Judiciary Sentencing Policy and Guidelines in regard to non- custodial sentences.
3. He states that he was charged with the offence of Murder contrary to Section 203 as read with Section 204 of the *Penal Code* in High Court Criminal Case No. 74 of 2013 and that he was ultimately sentenced to death.
4. He explains that he lodged an appeal to the Court of Appeal at Nakuru being Criminal Appeal No. 53 of 2017 where the death sentence was reduced to 15 years imprisonment which sentence is about to expire on 5th June 2027.
5. He says that he is ready and willing to comply with the conditions of the probation Order as shall be imposed on him as he understands the consequences of violating the probation Orders.
6. Served with that application, the Respondent opposed the same vide the Replying Affidavit sworn by Mr Kihara, Prosecution Counsel in the Office of the Director of Public Prosecution.



7. He states that the resentencing policy guidelines stipulate as to who can apply for resentencing , and in regard to murder convicts, it is:-
 - a. All offenders convicted of murder who have been subjected to mandatory death penalty and desire to be on sentence as at the time of the Supreme Court’s decision (14December 2017).
 - b. All offenders sentenced to death for murder after the decision in Muruatetu but without regard to or compliance with the court’s declaration (i.e., not taking into account mitigating factors).
8. He argues that having benefited from the Court of Appeal decision in his favour by reducing the death sentence to 15 years imprisonment, the Applicant cannot now run back to High Court seeking further review of the sentence.
9. It is his position that in this instance, this Court is functus officio and cannot interfere with the decision of the superior Court.
10. He concludes that having exhausted all avenues of Appeal, the Applicant’s only option is a remission which is granted to convicts who are recommended for good behaviour. He therefore urges the Court to dismiss this application.
11. This Court has considered the application and the Response thereto and has also accessed decision by the High Court and the Court of Appeal in regard to the Applicant herein.
12. High Court convicted the Applicant herein for the offence of Murder and sentenced him to life imprisonment.
13. The reason why the Court of Appeal interfered with the High Court’s decision is clear. To be specific, the Court stated in its judgment date 15th December 2023:-
 44. The appellant and the deceased had been friends. They drank alcohol together; and also had lunch together. Therefore, there does not appear to have existed any premeditation to assault, leave alone kill the deceased.
 45. Accordingly, although the appellant caused the death of the deceased, we find that the offence he committed was manslaughter. Our said decision is partially informed by the conduct of the appellant, immediately after he had assaulted the deceased. He rushed out and got a boda boda rider, who took the deceased to the hospital.
 46. The appellant also paid to the boda boda rider, the charges for the services rendered, when ferrying the deceased to the hospital. His conduct appears to us to be a genuine expression of remorse.
 47. Consequently, we set aside the conviction for murder contrary to section 203 of the *Penal Code* and convict the appellant for the offence of manslaughter contrary to section 202 (1) of the *Penal Code*. In the result, having substituted the conviction for murder with a conviction for manslaughter; and having taken into account the mitigation, we hereby set aside the sentence of life imprisonment and sentence the appellant to 15 years’ imprisonment.
 48. For avoidance of any doubt, we have also taken into account the provisions of section 333 (2) of the *Criminal Procedure Code*.



49. The sentence herein shall run from 5th June 2017, when the appellant was first sentenced. [Emphasis added]
14. There was no death sentence as alluded to by the Applicant and there is no specific mention of the Muruatetu case and the argument by the Respondent herein along that line does not lie.
15. It is the sentence of life imprisonment for offence of murder that was set aside by the Court of Appeal for reasons in the excerpt above.
16. Section 202 (1) of the *Penal Code* under which he was convicted by the Court of Appeal provides:-
- “ 202.
- (1) Any person who by an unlawful act or omission causes the death of another person is guilty of the felony termed manslaughter.”
17. The sentence thereto is provided for under Section 205 of the Act:-
- “ 205. Any person who commits the felony of manslaughter is liable to imprisonment for life.”
18. The Court of Appeal also complied with Section 333 (2) of the *Criminal Procedure Code* regarding the period the Applicant herein spent in custody.
19. In the circumstances, it is clear that the Applicant has exhausted all avenues of appeal. He has no recourse before this Court. His application is hereby dismissed .

DATED, SIGNED AND DELIVERED AT NAKURU THIS 8TH DAY OF MAY, 2025.

PATRICIA GICHOHI

JUDGE

In the presence of:

Nickson Kipchirchil Ruto -Applicant

Mr. Kihara for the Respondent

Ruto, Court Assistant

