



**Republic v GNJ (Criminal Case E001 of 2016)
[2025] KEHC 8284 (KLR) (13 June 2025) (Sentence)**

Neutral citation: [2025] KEHC 8284 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CRIMINAL CASE E001 OF 2016
AN ONGERI, J
JUNE 13, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

GNJ ACCUSED

SENTENCE

1. The Applicant was convicted with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code* on 31st October 2018.
2. The High Court found that the Applicant suffers from schizophrenia and ordered his detention at Mathare Mental Hospital at the pleasure of His Excellency the President pursuant to Section 165 of the *Criminal Procedure Code*.
3. The Applicant Counsel filed an application for review of the sentence,
4. The parties filed written submissions as follows:- The accused was at the conclusion of his trial was found guilty of murdering Fatuma Nzivili Chengo by reason of insanity. He was to be detained in Mathare Mental Hospital at the pleasure of the president. The accused person now seeks a review of his sentence, argues that his mental instability was evident during the trial and that his imprisonment is inhumane and degrading.
5. The accused submitted that the court's jurisdiction on resentencing in murder cases emanates from the supreme courts decision in *Muruatetu & Another v Republic; Katiba institute & 4 Others (amicus Curie)* (Petition 15 &16 of 2015) [2021] KESC 31 (KLR) (6 July 2021) (Directions).
6. In light of the guidelines provided in the aforementioned case, he is a convict at the age of 33 years and a first offender.



7. He argued that in as much as he was found guilty, it was evident that he had fallen into stress and depression after the loss of his business which led to his mental illness at the commission of the act.
8. Further that he was of good character and held a clean record before being charged in the matter herein. The accused family still hold him in high regard as per the Sentence Review Report where they indicated they would receive him, well if he is considered for review.
9. The accused submitted he was committed to Mathare Hospital and has since been treated, rehabilitated and released to Kamiti Prison.
10. He is still under medication and has promised to continue with the regimen as advised by the doctor.
11. His recent medical evaluations indicate that he is stable and fit to reintegrate into society.
12. He has since been in custody for about nine years and requests that this period be considered under section 333 (2) of the *Criminal Procedure Code*.
13. The prosecution alternatively submitted that this matter was fully heard and determined with judgements issued by two judges.
14. It was the prosecutions position that the court is functus officio and it cannot thus review or vary the sentence as it lacks jurisdiction.
15. It was their contention that the matter is now under the purview of the Executive arm of government or it can be appealed to the court of appeal. They therefore urged the court to uphold its previous decision and dismiss the application.
16. The sole issue for determination in this application is whether the sentence meted upon the Applicant should be reviewed.
17. I rely on the Supreme Court's landmark decision in Francis Karioko Muruatetu & Another v Republic [2017] eKLR, as well as subsequent jurisprudence on sentencing review and the treatment of offenders with mental illness in determining this application.
18. The Applicant was convicted of murder but found to have been suffering from schizophrenia at the time of the offense, leading to his detention at Mathare Mental Hospital under Section 165 of the *Criminal Procedure Code*.
19. The Applicant was detained at the pleasure of the President and he now seeks a review of his sentence, arguing that his prolonged detention is inhumane and degrading, particularly in light of his rehabilitation, medical stability, and the period already served in custody.
20. The prosecution contends that the court is functus officio and lacks jurisdiction to review the sentence, suggesting that the matter now falls within the purview of the Executive or the Court of Appeal.
21. However, this position is untenable in light of the Supreme Court's directions in Muruatetu(supra), which affirmed the judiciary's role in ensuring that sentences are proportionate, just, and subject to review where circumstances warrant.
22. The court in Muruatetu(supra) emphasized the need for individualized sentencing, taking into account mitigating factors, including the offender's mental health, age, and potential for rehabilitation.
23. This principle was further reinforced in William Okungu Kittony v Republic [2018] eKLR, where the Court of Appeal held that sentencing must be guided by the peculiar circumstances of each case, including the offender's mental state and prospects of reintegration into society.



24. In the present case, the applicant has demonstrated significant mitigating factors: he was a first offender, suffered from a documented mental illness at the time of the offense, and has undergone treatment and rehabilitation, with medical reports confirming his stability.
25. His family has expressed willingness to support his reintegration, as evidenced in the Sentence Review Report.
26. Furthermore, he has been in custody for nine years, a period that must be accounted for under Section 333(2) of the Criminal Procedure Code, which mandates that courts consider the time already served in detention.
27. The High Court's original order for detention at the President's pleasure was predicated on his mental state at the time of trial, but given his subsequent recovery, continued indefinite detention would amount to arbitrary and disproportionate punishment, contrary to Article 50(2)(p) of the Constitution, which guarantees the right to a fair trial, including the right to the benefit of the least severe prescribed punishment.
28. The prosecution's argument that the court lacks jurisdiction is misplaced. The High Court retains inherent powers under Article 165(3) of the Constitution to review its own decisions where justice so demands, particularly in cases involving mental health and prolonged detention.
29. This position finds support in Republic v John Kariuki [2020] eKLR, where the court held that detention orders under Section 165 of the Criminal Procedure Code must be subject to periodic review to ensure they remain justifiable.
30. Similarly, in Joseph Gicheru Muriithi v Republic [2021] eKLR, the Court of Appeal emphasized that courts must be alive to changes in an offender's circumstances, including improvements in mental health, when considering sentence reviews.
31. In light of the foregoing, it is evident that the Applicant's sentence ought to be reviewed.
32. He has served a substantial period in custody, demonstrated rehabilitation, and poses no evident risk to society if released under appropriate medical supervision.
33. Accordingly, the court hereby sets aside the order for detention at the President's pleasure and substitutes it with a sentence of time served, taking into account the nine years already spent in custody.
34. This decision aligns with the constitutional imperative of humane treatment, the principles of restorative justice, and the precedent set by Kenyan courts in similar cases involving mentally ill offenders.
35. I direct that the Applicant shall be released forthwith unless lawfully held for any other reason, subject to compliance with any ongoing medical treatment and supervision as may be recommended by the relevant mental health authorities.

DATED, SIGNED AND DELIVERED THIS 13TH DAY OF JUNE, 2025 IN OPEN COURT AT VOI HIGH COURT.

ASENATH ONGERI

JUDGE

In the presence of:-

Court Assistant: Millicent

