



**Awino v Republic (Criminal Revision E126 of 2024)
[2025] KEHC 10062 (KLR) (11 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10062 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL REVISION E126 OF 2024**

**A MABEYA, J
JULY 11, 2025**

BETWEEN

KEVIN AKONGO AWINO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant, Kevin Akongo Awino was charged and convicted with the offence of murder contrary to section 203 as read with 204 of the Penal Code and sentenced on the 21/3/2023 to serve 18 years' imprisonment.
2. By a Notice of Motion dated 20/8/2024, the applicant sought the rehearing of his sentence on the grounds that following the revising of the Judiciary Sentencing Policy Guidelines 2023 at paragraph 4.4, a person pleading guilty should be given a discount in his sentence as per the stage of pleading guilty.
3. The applicant submitted that he was a first-time offender with an infant family of which he was the sole bread winner and had since been rehabilitated, reformed, re-adapted and remorseful.
4. The State opposed the application stating that no appeal is allowed under section 348 of the Criminal Procedure Code where an accused person pleads guilty. That section 204 of the Penal Code provides for a death sentence where one is convicted of murder and the sentence meted out on the applicant was lenient especially as the applicant had only served 2 years of the sentence of 18 years.
5. That the Court ought not to interfere with the sentence meted out on the applicant but exercise its discretion and invoke section 333 (2) of the Criminal Procedure Code and clarify the sentence.



6. Section 348 of the [Criminal Procedure Code](#) does prohibit appeals against a plea of guilty. It provides: -

“No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court, except as to the extent or legality of the sentence.”

7. The Court in *Olel v Republic* (1989) KLR 444 interpreted the above provision as follows:

“Where a plea is unequivocal, an appeal against conviction does not lie. Section 348 of the [Criminal Procedure Code](#) (Cap 75) does not merely limit the right of appeal in such cases but bars it completely.”

8. This Court’s jurisdiction on resentencing in murder cases emanates from the Supreme Court’s landmark decision in *Muruatetu & another v Republic; Katiba Institute & 4 others (Amicus Curiae)* (Petition 15 & 16 of 2015) [2021] KESC 31 (KLR) (6 July 2021) (Directions) wherein the apex Court issued the following directions: -

“To the extent directly relevant to the matters under review in these directions, we note the Attorney General in his Report, together with the Task Force recommended, that:

- a) Life imprisonment be substituted where the [Penal Code](#) previously provided for the death penalty, with the option of life imprisonment without parole for the most serious of crimes; and that if not abolished, the death penalty should only be reserved for the rarest of rare cases involving intentional and aggravated acts of killing.
- b) All offenders, subject to the mandatory death penalty, including those convicted and sentenced prior to 2010, who are serving commuted sentences, will be eligible for re-sentencing, including all offenders sentenced to death as at the time of the decision which was made on December 14, 2017.
- c) Where an appellant has lodged an appeal against a conviction and/or sentence, the appellate court must, at any stage before judgment, remit the case to the trial court for re-sentencing ...

18. Having considered all the foregoing, to obviate further delay and avoid confusion, we now issue these guidelines to assist the Courts below us as follows:

- i) The decision of *Muruatetu* and these guidelines apply only in respect to sentences of murder under sections 203 and 204 of the [Penal Code](#);
- ii) The Judiciary Sentencing Policy Guidelines to be revised in tandem with the new jurisprudence enunciated in *Muruatetu*;
- iii) All offenders who have been subject to the mandatory death penalty and desire to be heard on sentence will be entitled to re-sentencing hearing.
- iv) Where an appeal is pending before the Court of Appeal, the High Court will entertain an application for re-sentencing upon being satisfied that the appeal has been withdrawn.



- v) In re-sentencing hearing, the court must record the prosecution's and the appellant's submissions under section 329 of the *Criminal Procedure Code*, as well as those of the victims before deciding on the suitable sentence.
- vi) An application for re-sentencing arising from a trial before the High Court can only be entertained by the High Court, which has jurisdiction to do so and not the subordinate court.
- vii) In re-hearing sentence for the charge of murder, both aggravating and mitigating factors such as the following, will guide the court;
 - (a) Age of the offender;
 - SUBPARA(b)
 - Being a first offender;
 - (c) Whether the offender pleaded guilty;
 - (d) Character and record of the offender;
 - (e) Commission of the offence in response to gender-based violence;
 - (f) The manner in which the offence was committed on the victim;
 - (g) The physical and psychological effect of the offence on the victim's family;
 - (h) Remorsefulness of the offender;
 - (i) The possibility of reform and social re-adaptation of the offender;
 - (j) Any other factor that the court considers relevant.
- viii) ...
- ix) These guidelines will be followed by the High Court and the Court of Appeal in ongoing murder trials and appeals. They will also apply to sentences imposed under section 204 of the *Penal Code* before the decision in Muruatetu.”

9. It is evident from the foregoing principles that the powers of this Court when considering the re-hearing of sentence are limited to circumstances where the trial court imposed a death sentence under section 204 of the *Penal Code*.
10. However, in the present case, the applicant was sentenced to serve 18 years' imprisonment. This case does not reflect the scenario envisaged in the Muruatetu case (supra) where the court dealt with the issue of sentence re-hearing for death penalty cases. Indeed, the Supreme Court was clear that the guidelines apply only in respect to sentences of murder under sections 203 and 204 of the *Penal Code*.
11. In the premises, the Court finds that the present application is devoid of merit. The same is hereby dismissed in its entirety.



12. It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 11TH DAY OF JULY, 2025.

A. MABEYA, FCI ARB

JUDGE

