



**Mwanziu v Republic (Criminal Petition E002 of 2024)
[2025] KEHC 9557 (KLR) (1 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9557 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITUI
CRIMINAL PETITION E002 OF 2024
LW GITARI, J
JULY 1, 2025**

BETWEEN

BEATRICE MBITHE MWANZIU PETITIONER

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant has filed this Petition seeking orders that the petition be heard expeditiously under Article 47(1) of the Constitution. That the court to consider the time she has been in prison from 2017 and have embraced rehabilitation holistically.
2. The applicant avers that she was charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code and convicted. She commuted to the prison at the President pleasure in 2022. That the sentence is unconstitutional. She has approached the court for re-sentencing in line with Section 262 – 364, Articles 160(1), 165(3) 4 of the Constitution and Section 166 of the Criminal Procedure Code.
3. The applicant has approached the court under Article 20 & 22 of the Constitution as her rights as enshrined under the Bill of Rights is threaten, contravened, or likely to be violated. Her contention is that the sentence imposed is indeterminate and violates Articles 160(1) of the Constitution of Kenya 2010.
4. The applicant relies on Article 50(2) (p) of the Constitution which provides that an accused person has the right to benefit of the least severe prescribed punishment for an offence, if the prescribed punishment for the offence has been charged between the time that the offence was committed and the time of sentencing. The applicant also cites Article 25 of the Constitution which provides that the right to fair trial cannot be limited.



5. That the court filed to take into account the time she had spent in custody as provided under Section 333(2) of the Criminal Procedure Code. In a nutshell and based on the above cited provisions of the Constitution, the cases of Ahamad Abolfath -vs- Republic (sic) 2016 case, Francis Karioko Muruatetu -vs- Republic (2017) and Section 333(2) of the Criminal Procedure Code, the applicant seeks review of the sentence.
6. The brief background in this matter is that the applicant was charged with murder contrary to Section 203 as read with Section 204 of the Penal Code. It was alleged that on 19/7/2017 at Kathini Village in Kiseuni Sub-location she unlawfully killed Mutua Mbithe. The accused pleaded not guilty but after a full trial she was found guilty as charged and was convicted.
7. At the time of sentencing, the Judge, Limo J. noted that after considering the Probation Officer's Report, due to her mental state, it was fit and just to order that she be taken for mental treatment and after that she would be held at the President's pleasure given that she may be a danger to her other children and the society if released. The victim of the crime of murder was the applicant's biological child. The applicant was committed to Mathari Mental Hospital and later discharged to continue with treatment at the facility as an outpatient. She is currently at Langata Women Prison where she is held at the President's pleasure.
8. The state opposed the present application as the applicant is held at President pleasure. That Section 333(2) is not applicable as the sentence was not definite.
9. I have considered the application. The application seeks review of the sentence. The issue is whether this court should order a review of the sentence. The applicant seeks review under Section 362 of the Criminal Procedure Code which provides as follows:

“The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.”
10. The High Court exercises a supervisory role over sub-ordinate court. It has no jurisdiction to exercise powers of revision over decisions of the High Court. The application based on Section 362 over a decision of the High Court is not properly before this court. Article 165(6) of the gives High Court supervisory jurisdiction over the Sub-ordinate courts but not over a Superior Court. This further shows that the petition is not properly before this court. The appellant has alleged that the sentence imposed violates her rights to fair trial. In particular she challenges the indeterminate sentence which is at the President pleasure. Article 165(3)(b) gives the High Court jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threaten.
11. The applicant committed the offence while suffering a mental illness. The court found that she was guilty but insane. Section 166 of the Criminal Procedure Code provides for the procedure to be followed where a person is found guilty but insane. Section 166 provides:

“(1) Where an act or omission is charged against a person as an offence, and it is given in evidence on the trial of that person for that offence that he was insane so as not to be responsible for his acts or omissions at the time when the act was done or the omission made, then if it appears to the court before which the person is tried that he did the act or made the omission charged but was insane at the time he did or made it, the court shall make a special finding to



the effect that the accused was guilty of the act or omission charged but was insane when he did the act or made the omission.

- (2) When a special finding is so made, the court shall report the case for the order of the President, and shall meanwhile order the accused to be kept in custody in such place and in such manner as the court shall direct.
- (3) The President may order the person to be detained in a mental hospital, prison or other suitable place of safe custody.
- (4) The officer in charge of a mental hospital, prison or other place in which a person is detained by an order of the President under subsection (3) shall make a report in writing to the Minister for the consideration of the President in respect of the condition, history and circumstances of the person so detained, at the expiration of a period of three years from the date of the President's order and thereafter at the expiration of each period of two years from the date of the last report.
- (5) On consideration of the report, the President may order that the person so detained be discharged or otherwise dealt with, subject to such conditions as to his remaining under supervision in any place or by any person, and to such other conditions for ensuring the safety and welfare of the person in respect of whom the order is made and of the public, as the President thinks fit.
- (6) Notwithstanding the subsections (4) and (5), a person or persons thereunto empowered by the President may, at any time after a person has been detained by order of the President under subsection (3), make a special report to the Minister for transmission to the President, on the condition, history and circumstances of the person so detained, and the President, on consideration of the report, may order that the person be discharged or otherwise dealt with, subject to such conditions as to his remaining under supervision in any place or by any person, and to such other conditions for ensuring the safety and welfare of the person in respect of whom the order is made and of the public, as the President thinks fit.
- (7) The President may at any time order that a person detained by order of the President under subsection (3) be transferred from a mental hospital to a prison or from a mental hospital, or from any place in which he is detained or remains under supervision to either a prison or a mental hospital.”

12. Under the Section, the court is supposed to proceed in the manner stated therein which is as follows:
 1. To make or issue an order that the offender be held in custody in such a place and manner.
 2. The court reports the case to the President that this order has been issued.
13. Depending on the mental status of the accused at the time of sentencing, the court may order that she be detained in a mental hospital to undergo treatment and thereafter be committed to prison. The Mental Hospital is supposed to give a report on the condition of the accused history and circumstances of the detained person for consideration by the President.
14. I note that Mathari Mental Hospital filed a report stating that the accused is still on treatment. The applicant has stated that the sentence violates her rights. Indeed, the indefinite nature of the sentence



has been held to be unconstitutional. See, R. V Samson Otieno Munyoro H.C Kisumu No. 6/2011, B.K.J -vs- Republic H.C Meru CR Appeal 16/2015 and H.M -vs- Republic 17/2017.

15. However, the Section remains the law in place to deal with person found guilty and insane. In this case, the court held that the accused required to be committed in prison as she is a danger to herself and others. The report which was issued by the mental hospital after three years states that she still needs to continue with the treatment. The rights of accused are not violated as she needs the treatment and she is detained in prison under a lawful court order. In the circumstances her rights have not been violated. She needs treatment until such time that she will be certified fit to be released back to the society.
16. The accused is serving a sentence at the President's pleasure. Section 333(2) of the [Criminal Procedure Code](#) does not apply. The appellant was charged with serious offence and it is important that she undergoes the treatment until such time that she will be certified fit to go back to the society.
17. For these reasons, I find that the application lacks merits. The accused will be detained as ordered and continue with treatment.

DATED, SIGNED AND DELIVERED AT KITUI THIS 1ST DAY OF JULY 2025

HON. LADY JUSTICE L. GITARI

JUDGE

