



REPUBLIC OF KENYA



**KENYA LAW**  
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**Julius v Republic (Miscellaneous Criminal Petition E001 of 2025)  
[2025] KEHC 13184 (KLR) (24 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13184 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT CHUKA  
MISCELLANEOUS CRIMINAL PETITION E001 OF 2025**

**RL KORIR, J  
SEPTEMBER 24, 2025**

**BETWEEN**

**BONIFACE MURITHI JULIUS ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Boniface Murithi Julius (Petitioner) filed the present Petition under various articles of the Constitution namely 23, 26, 27, 28, 29 and the Probation of Offenders Act (Cap 64).

He seeks the following Orders reproduced verbatim:-

- a. A declaration that sentence of 10 years imposed upon him by Chuka High Court vide Criminal Case No. E009/2022 is inconsistent with Article 25(c) and 50 of the Constitution of Kenya and Section 329 of the Criminal Procedure Code.
  - b. A declaration on that the imposition of mandatory custodial sentence is inconsistent with Article 25, 28, 29, 48 and 50(2) of the Constitution.
  - c. A declaration that the constitutional rights of the petitioner herein were highly violated in sentencing him to a custodial sentence.
  - d. A declaration in the alternative for review of the Petitioner's sentence as the majority of the provisions stipulated in Section 4(1) (2) of the Probation Act favour the Petitioner herein.
  - e. An order for the remaining part of the sentence be substituted with a non-custodial sentence as the circumstances of this case favours the Petitioner.
2. His grounds are that he has been substantially rehabilitated and that his health had deteriorated while in prison.



3. The Petition was heard by way of written submissions. The Petitioner's undated submissions were received in court on 16<sup>th</sup> June, 2025 while the Respondent's submissions are dated 16<sup>th</sup> July 2025.

### **Applicant's submissions**

4. The Applicant submitted that he pleaded guilty and saved judicial time. That the offence he was charged with was spontaneous and not pre-meditated. He stated that under Article 159 of the Constitution, the court is encouraged to promote alternative dispute resolution and embrace probation and other own-custodial measures as alternative punishment. He submitted that he was a first offender.
5. The Applicant further submitted that his 3 children who were now in University, College and High School respectively were suffering as he was their sole breadwinner. He stated that he suffered backache which required monthly physiotherapy. He prayed that the court may grant him a second chance.

### **The Respondent's Submissions**

6. The Respondent identified one issue for determination being whether the Petitioner was entitled to a sentence reduction. They submitted that the Petitioner was initially charged with murder but the charge was reduced to manslaughter after successful plea negotiations. That the court sentenced the Petitioner to 10 years imprisonment as opposed to the maximum sentence of life imprisonment.
7. The Respondent submitted that while the court had the power on revision to increase, reduce or alter the nature of the sentence, the seriousness of the offence ought to be taken into consideration.

### **Analysis and Determination**

8. The Petitioner in this case has come under the Article 23 of the Constitution seeking a declaration that the sentence of 10 years was inconsistent with Article 25(k) and 50 of the Constitution. That his custodial sentence violated his constitutional rights.
9. The starting point in this Petition is whether or not the Petitioner was serving a lawful sentence.
10. The record shows that the Petitioner was arraigned in court on 4<sup>th</sup> May, 2022 to answer to a charge of murder contrary to section 203 as read with Section 204 of the Penal Code. The particulars of the offence were that he murdered one Franklin Gitonga Martin on 17<sup>th</sup> April 2022 at Old Marima Market in Maara Sub-County within Tharaka Nithi County.
11. Before the trial commenced on 21<sup>st</sup> March 2023, the Petitioner (then Accused) expressed his desire to enter into plea negotiations with the Prosecution. The trial was stayed to allow the parties plea bargain.
12. Section 137A of the Criminal Procedure Code provides for plea bargaining. According to the record, the plea offer was made by the Petitioner. As required by law, the court ensured that agreement was voluntary. It was only then that the Petitioner was allowed to plead to the lesser charge.
13. A Plea Agreement was subsequently filed in court. The court accepted the Plea Agreement and the Accused pleaded guilty to the charge of manslaughter contrary to section 202 as read with section 205 of the Penal Code and was convicted accordingly.
14. The record further shows that there was a sentencing hearing where the Accused gave his mitigation which was recorded and considered by the court.



15. In her ruling dated 31<sup>st</sup> March 2023 Gitari J. considered at length the circumstances of the offence and the mitigation of the Accused. The court came to the conclusion that;

“However considering the facts of the case in totality as well as the sentiments offered in mitigation by counsel for the Accused, it is my view that justice is two ways and must be done to the Accused and the victims of crime. In situations like the one before me, I should temper justice with mercy as I also ensure that the Accused is punished for his irresponsible behavior. A term of imprisonment is called for in the circumstances.”

16. From the record as shown above, I have found nothing unconstitutional about the Petitioner’s trial or sentence.

17. The penalty for manslaughter is provided under Section 205 of the Penal code which states:-

“205. Any person who commits the felony of manslaughter is liable to imprisonment for life.”

18. The trial court sentenced the Petitioner to 10 years imprisonment. As submitted by the Respondent this was not a maximum but lenient sentence in the circumstances of the case. It is to be remembered that sentencing is eminently at the discretion of the trial court. In the case of [Bernard Kimani Gacheru v Republic](#) (2002) eKLR, the Court of Appeal stated that:-

“It is now settled law, following several authorities by this court and the high Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, the sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account the wrong material, or acted on the wrong principle. Even if, the appellate court feels that the sentence is heavy and that the appellate court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, anyone of the matters already states is shown to exist.”

19. Section 137L(1) of the [Criminal Procedure Code](#) gives the Petitioner the right to appeal against sentence. It provides:-

“137L(1) Subject to subsection (2), the sentence passed by a court under this Part shall be final and no appeal shall lie therefrom except as to the extent or legality of the sentence imposed.”

20. I have found no reason to grant the declaration sought by the Petitioner. As earlier stated, there was nothing unconstitutional about his trial or sentence. His recourse is to appeal his sentence to the Court of Appeal as provided by law.

21. The Petition is dismissed.

**RULING DELIVERED, DATED AND SIGNED AT CHUKA THIS 24<sup>TH</sup> DAY OF SEPTEMBER, 2025.**

.....  
**R. LAGAT-KORIR**  
**JUDGE**



Ruling delivered in the presence of the Applicant acting in person and Ms Rukunga for the State; Moses (Court Assistant).

