



REPUBLIC OF KENYA



KENYA LAW
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**Kemboi v Republic (Criminal Petition E028 of 2025)
[2025] KEHC 12543 (KLR) (10 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12543 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL PETITION E028 OF 2025**

RN NYAKUNDI, J

SEPTEMBER 10, 2025

**IN THE MATTER OF: ARTICLE 2(1), 3(1), 23(1) 25(A) (C), 27(1) (2)
28, 29(A) (F), 48, 50, 159(2) (A), 165 OF THE CONSTITUTION OF
KENYA 2010**

AND

**IN THE MATTER OF: HIGH COURT PETITION NO. E017 OF 2021 AT
MACHAKOS**

**AND IN THE MATTER OF: SECTION 213, 216, 329, 362, 364(1) (B)
OF THE CPC**

AND

IN THE MATTER OF: JUDICIAL SERVICE ACT 2011

AND IN THE MATTER OF: SENTENCE POLICY GUIDELINES 2016

AND

**IN THE MATTER OF: HIGH COURT PRACTICE AND PROCEDURE
RULES 2013**

AND

**IN THE MATTER FUNDAMENTAL RIGHTS AND FREEDOM AS UNDER
ARTICLE 27, 28, 29 AND 48 OF THE CONSTITUTION OF KENYA 2010**

BETWEEN

JOSEPH KEMBOI PETITIONER

AND

REPUBLIC RESPONDENT



RULING

1. Before this court is an undated Notice of motion under certificate of urgency seeking the following orders:
 - a. That the petitioner is seeking for sentence review in accordance to Article 50(2) (p) (q) of the Constitution of Kenya 2010.
 - b. That the application be certified urgent and service thereof be dispensed with to be heard in the first instance.
 - c. That the petitioner has been in prison for a long period of time.
 - d. Spent.
2. Which application is supported by the annexed affidavit sworn by Joseph Kemboi with the following grounds:
 - a. That I was charged with offence of manslaughter contrary to Section 204 as read with 205 of the Penal Code. Convicted and sentenced to 25 years' imprisonment.
 - b. That I am a first offender seeking for leniency.
 - c. That I have a family depending on me.
 - d. That it's my prayer that I be granted a fair opportunity to argue my petition.
 - e. That I pray that may this Honourable Court review my sentence.
 - f. That it's my humble prayer that I be granted a fair opportunity to argue my petition.

Decision

3. The Applicant has invoked the jurisdiction of this Court in accordance with Section 362, 364 (1) and 365 of the Criminal Procedure Code. He put forward the grounds of being a family man and that the period spent in custody should be considered.
4. In his submissions the Applicant has placed reliance of the following provisions: constitutions imperatives include;
Article 27: Equality and freedom from discrimination
 1. Every person is equal before the law and has the right to equal protection and equal benefit of the law.
 2. Equality includes the full and equal enjoyment of all rights and fundamental freedoms.
 3. Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.
 4. The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.



5. A person shall not discriminate directly or indirectly against another person on any of the grounds specified or contemplated in Clause (4).
6. To give full effect to the realization of the rights guaranteed under this Article, the state shall take legislative and other measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination.
7. Any measure taken under Clause (6) shall adequately provide for any benefits to be on the basis of genuine need.
8. In addition to the measures contemplated in Clause (6), the State shall take legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender.

Article 28: Human dignity

Every person has inherent dignity and the right to have that dignity respected and protected.

Article 29: Freedom and security of the person

Every person has the right to freedom and security of the person, which includes the right not to be-

- a. Deprived of freedom arbitrarily or without just cause;

Article 48: Access to justice

The State shall ensure access to justice for all persons and, if any fee is required, it shall be reasonable and shall not impede access to justice.

5. The Court of Appeal in *Thomas Mwambu Wenyi vs Republic* (2017) eKLR held that:

“Sentencing is an important task in the matter of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straight jacket formula for sentencing an accused person on proof of crime. The courts have evolved certain principles: twin objective of sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstance of each case and the courts must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances. The principle of proportionality in sentencing a crime doer is well entrenched in criminal jurisprudence. As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crime doer. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence.”

6. From the facts of this case, there is no error of fact or law or discovery of new evidence which is so compelling as provided for under Article 50 (6) (a) & (b) of the *Constitution* to review the sentence passed by the trial Court on 29th November 2022. In my view offences which fall under Article 26 of the *Constitution* on the right to life unless there are and can be seen to be truly convincing reasons for a different response. The crimes in question are therefore required to elicit a severe, standardized and consistent response in terms of punishment from our courts. The specific sentence founded on the provisions of Section 204 of the Penal Code and the principles in *Francis Karioko Muruatetu v R*



(2017) eKLR is not to be departed from lightly and for flimsy reasons. That is the very reason why the Legislature deliberately made it a mandatory sentence and thereafter the marginal underlying factors to be taken into account are well stated by the Supreme Court in the Muruatetu dicta. In so doing, courts must remember that the death penalty, as prescribed by the Legislature for the crime of murder, signifies that the offence has been singled out for the most severe punishment. Therefore, any sentence imposed in lieu of the prescribed penalty should be assessed with due regard to the benchmark provided under Section 204 of the Penal Code.

7. For those reasons, all the other grounds agitated in the affidavit of the Applicant for this court to invoke review jurisdiction under Article 50 (6) (a) & (b) of the *Constitution* fails save for a credit pre-detention of 9 months which shall be discounted from the custodial sentence in consonant with Section 333(2) of the Criminal Procedure Code.
8. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT ELDORET THIS 10TH DAY OF SEPTEMBER 2025.

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R. NYAKUNDI

JUDGE

