



REPUBLIC OF KENYA



**Mbeche v Republic (Criminal Petition E005 of 2022)  
[2024] KEHC 5686 (KLR) (20 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 5686 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KILGORIS  
CRIMINAL PETITION E005 OF 2022**

**F GIKONYO, J**

**MAY 20, 2024**

**REVISION FROM ORIGINAL CONVICTION AND  
SENTENCE IN KILGORIS SPMCR NO. E825 OF 2022**

**BETWEEN**

**AMOS MAENGWE MBECHE ..... PETITIONER**

**AND**

**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

1. Before the court is an undated application for sentence review. The petitioner is seeking for reduction of his sentence. The application is based on the grounds that the is harsh considering the petitioner's health, he has reformed and is ready to be reintegrated back into society.
2. The application is expressed to be brought under section 4(1) and (2) of the [Probation of Offenders Act](#) and section 333(2) of the [CPC](#) and the judiciary sentencing policy guidelines.

**Brief background of this case**

3. The petitioner was charged with Manslaughter contrary to Section 202 as read with Section 205 of the [Penal Code](#). The petitioner was found culpable and convicted by the trial court and sentenced to 10 years imprisonment.
4. The petitioner being dissatisfied with the sentence has filed the petition herein.

**Directions of the court**

5. The petition was canvassed by way of written submission. The petitioner has filed. The prosecution has not filed.



### **The Petitioner's submissions.**

6. The petitioner submitted that there were no aggravating factors to compel the trial court to impose the 10 years imprisonment on him.
7. The petitioner submitted that the trial court did not consider the fact that he was a first offender, pleaded guilty, and his mitigation of being remorseful and pledging not to commit the same offence. The petitioner argued that the offence was committed accidentally and that he has been traumatized by the incident as the victim was his daughter. The petitioner relied on the case of Felix Nthiwa Munyao v R Nairobi Court of Appeal Criminal Appeal No. 187 of 2000
8. The petitioner submitted that the sentence imposed upon him is excessive in light of the minimum sentence prescribed by the law. The petitioner further submitted that there are set out circumstances under which an appellate court interferes with the sentence the petitioner relied on the cases of *S v Malgas* 2001 (1) SACR 469 (SCA), *Mokela v the State* (135/11) [2011] ZASCA 166, *Ogolla s/o Owuor v Republic* [1954] EACA 270, *Benard Kimani Gacheru v Republic* [200] eKLR, *Francis Karioko Muruatetu & Another v Republic, and Republic v Daniel Okello Rapuch* [2017] eKLR.

### **ANALYSIS AND DETERMINATION**

Issue

9. Is the sentence herein harsh or excessive in the circumstances of this case?
10. Currently, 'mandatory or minimum sentence' seems to be a wonderful or magic word or expression to use in any application for review of sentence when one wants to blur the real purport of a particular penalty clause or to avoid court's clarity of thought on sentences. Care should be taken not to fall for such decoy or red herring. The applicant attempted to introduce the notion of mandatory or minimum sentence in this matter which concerns Section 205 of the [Penal Code](#).
11. Having said that, the petitioner submitted that the trial court did not consider the fact that he was a first offender, pleaded guilty, and was remorseful and pledged not to commit the same offence. The petitioner argued that the offence was committed accidentally and the petitioner has been traumatized as the victim was his daughter.
12. Although the accused stated that the offence was committed accidentally, the circumstances of the commission of the offence are around gender-based or family-based violence. Upon consideration of all the mitigating factors stated by the petitioner as well as aggravating factors which includes the seriousness of the offence and the fact that the offence may attract a sentence of life imprisonment, a sentence of 10 years is not excessive. However, for purposes of section 333(2) of the [CPC](#), the sentence will commence from 12.10.2021 when he was first arraigned in court.
13. Right of appeal explained.
14. Orders accordingly.

**DATED, SIGNED, AND DELIVERED AT NAROK THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 20<sup>TH</sup> DAY OF MAY, 2024.**

.....  
**F. GIKONYO M**  
**JUDGE**



In the presence of: -

Appellant

Okeyo for DPP

Otolo C/A

