



**Mugo & another v Republic (Criminal Revision 238 of 2024)
[2024] KEHC 10878 (KLR) (17 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 10878 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL REVISION 238 OF 2024
DR KAVEDZA, J
SEPTEMBER 17, 2024**

BETWEEN

JOSEPH MACHARIA MUGO 1ST APPLICANT

ANNE AKEYO MUSANDA 2ND APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. This file was brought before me for the decongestion exercise pursuant to the Chief Justice's memo dated 7/12/2022, which provides that inmates who are serving three (3) years imprisonment or less, or those serving long sentences but have a balance of three (3) years or less may be considered for non-custodial sentences.
2. I have gone through the file and noted that the Applicants were jointly convicted by the trial court on two counts of the offence of Trafficking in Narcotic Drugs contrary to section 4(a) of the *Narcotic Drugs and Psychotropic Substances (control) Act* No. 4 of 1994. In count 1, they were both sentenced to pay a fine of Kshs. 2,301,840/=, in default to serve 1 year imprisonment. They was also sentenced to serve an additional 2 years imprisonment. In count 2, they were sentenced to pay a fine of Kshs. 1,000,000/= in default to serve 1 year imprisonment. They were also sentenced to an additional 1-year imprisonment. Cumulatively, they were both sentenced to serve 5 years imprisonment.
3. Probation Reports and Recommendation Letters from prison were filed with respect to both Applicants.
4. For the 1st Applicant, the Recommendation Letter from Nairobi Remand/ All Maximum Prison dated 15th August 2024 indicates that the Applicant has been of good character since his admission to prison and that he has been receptive to rehabilitation programs.



5. Similarly, the Report from Lang'ata Women Prison indicates that the Applicant has 2 years and 4 months left to complete her sentence. The 2nd Applicant has been of good character since her admission to prison.
6. According to Probation Report with respect to the 1st Applicant, he has been receptive to rehabilitation programs and deeply regrets his actions. However, the Report highlights that the local administration, particularly the Assistant County Commissioner and the area Chief Kinoo, are opposed to the release of the 1st Applicant herein, citing increased cases of drug trafficking in the area, and that releasing the 1st Applicant will be a setback on the efforts being made to combat drug trafficking in the area. The probation office at Kikuyu is also unwilling to supervise the 1st Applicant, citing that they rely on community leaders for supervision and reintegration, and since they are unwilling, supervision will be challenging.
7. The findings in the probation report concluded that the 1st Applicant is not suitable to serve a non-custodial sentence and that he should serve his sentence to completion.
8. The Probation Report of the 2nd Applicant has similar findings to those of the 1st Applicant.
9. Based on the findings in both Reports, I am inclined to find that the Applicants herein are not suitable for a non-custodial sentence. I therefore decline to release them under the decongestion exercise.
10. File closed.
Orders accordingly.

RULING DELIVERED THIS 17TH DAY OF SEPTEMBER 2024.

D. KAVEDZA
JUDGE

