



**Gatimu v Republic (Criminal Petition E003 of 2023)
[2024] KEHC 15517 (KLR) (3 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15517 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NANYUKI
CRIMINAL PETITION E003 OF 2023
AK NDUNG’U, J
DECEMBER 3, 2024**

BETWEEN

JAMES MWANGI GATIMU PETITIONER

AND

REPUBLIC RESPONDENT

RULING

1. The Petitioner herein, James Mwangi Gatimu, was convicted of Murder contrary to section 203 as red with Section 204 of the Penal Code and sentenced to be held at H.E Presidential Pleasure and to serve not less than 15 years (Kasango J).
2. In his undated Chamber summons filed in court on 23rd June, 2023, the Petitioner herein is seeking for an interpretation of the court in the application of the President’s Pleasure sentences. The Petition is brought under Articles 22(1), 23(1, 25(c), 27, 28, 50(2)(p)(q), 53(1(f)(I & (ii), (2), 159(2), 160(1) and 165 of *the Constitution* of Kenya and Section 296(2) of the *Penal Code*, Section 25(2) (3), 216, 329 and 333(2) of the *Criminal Procedure Code*.
3. It is the Petitioners prayer that –
 - a. That the Honourable Court be pleased to review his sentence and grant him a lenient definite sentence since section 245(2) & (3) of the Penal Code is unconstitutional in that it violates the provisions of Article 53 (1) (f) (i) (ii) (2) and Article 160 (1) of *the Constitution* of Kenya, 2010 and international conventions governing the rights of children.
 - b. That the period spent in remand custody be computed into the eventual sentence to be awarded pursuant to the provisions of section 333(2) of the *Criminal Procedure code* and also pursuant to.
 - c. Any other order that the Honourable court deems fit to give in the interest of justice.



4. The Petition is supported by an affidavit sworn by the Petitioner herein dated 9th May, 2023.
5. Counsel for the Respondent filed a Notice of Preliminary Objection intending to raise an objection in limine on points of law. Counsel further argued orally that this court has no jurisdiction to review a sentence passed by a court of concurrent jurisdiction. The Petitioner in response stated that he prays for his sentence to be reviewed since he had no appeal anywhere.
6. I have considered the rival arguments by the parties. The question for determination is whether the preliminary objection raised has merit and if in the affirmative, the effect thereof.
7. To determine this issue, it is necessary that this court has access to the proceedings before the High Court in Criminal Case No. 36 of 2015. The record availed is contained in what is labelled a skeleton file with proceedings superimposed with a hand written note reading “for correction”.
8. The failure to annex certified proceedings renders the application incompetent. I hasten to add that it is possible that the challenge could have arisen due to the fact that the Petitioner is incarcerated and is without the luxury of free movement to pursue the proceedings. For that reason, I will be reluctant to shut the doors to justice in his face.
9. I proceed to strike out the petition but open a window for the Petitioner to lodge a competent one should he so desire.

DATED SIGNED AND DELIVERED VIRTUALLY THIS 3RD DAY OF DECEMBER 2024

A.K. NDUNG’U

JUDGE

