



**Kabiro v Republic (Miscellaneous Criminal Application E058 of 2024)
[2025] KEHC 13574 (KLR) (30 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13574 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
MISCELLANEOUS CRIMINAL APPLICATION E058 OF 2024
RL KORIR, J
SEPTEMBER 30, 2025**

BETWEEN

PATRICK NJUE KABIRO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

- Patrick Njue and Albert Gitonga (now deceased) were jointly charged with several counts as follows:-
Count 1
Growing cannabis sativa in a public forest contrary to section 67(8) (C) of Forest Conservation.
Count II
Being in possession of Narcotic Drugs (Bhang) contrary to Section 3(1) as read with section 3(1) (a) of *Narcotic Drugs and Psychotropic Substances Control Act* No. 4 of 1994.
Count III
Dealing in wildlife trophy (elephant meat) contrary to Section 92(2) of *Wildlife Conservation and Management Act* 2013.
Count IV
Being in possession of Poison weapon (Bows and arrows) in public forest contrary to section 67(4) of Forest Conservation and Management.
- They pleaded guilty to all counts and were both duly convicted and sentenced as follows:-
Count 1- Each to serve (3) three years imprisonment
Count 2- Each to serve (2) two years in imprisonment



Count 3- Each to serve (2) two years imprisonment

Count 4- Each to serve (2) two years imprisonment.

The sentences were stated to run concurrently.

3. The Applicants filed the present Application seeking that their sentences be revised to take into consideration the period of 4 months they had spent in pre-trial custody. They swore identical affidavits in support of the Application.
4. When the Application came up for Directions on 28th April 2025, the court was informed by the Prosecution's Counsel that the 2nd Applicant had passed on and there was a signal from the prison to that effect.
5. The signal received in court on 28th April, 2025 reported that Albert Gitonga died on 24th April 2025 while undergoing treatment at Meru Teaching and Referral hospital.
6. The 2nd Applicant's case consequently abated and the 1st Applicant Application was scheduled for hearing on 29th April 2024.
7. The 1st Applicant Patrick Njue Kabiro made oral submissions in support of his application. He submitted that his request was for the court to consider the period of 4 months which he spent in pre-trial custody. He stated that his children were suffering as he was their sole bread winner and also took care of the children of his deceased siblings. The Applicant further submitted that he was found in the shamba where cannabis had been grown. That it was not his crop and he had only gone there for casual work which he didn't know was unlawful. He asked the court to forgive his indiscretion.
8. The Application was opposed by the Respondent. In submissions dated 28th April, 2025, the Respondent stated that the offence under Section 67(8) (c) of the [Forest Conservation and Management Act](#) attracted a sentence of a fine not exceeding three million shillings or imprisonment for a term not exceeding ten years, or to both such fine and imprisonment. That the trial court upon considering the circumstances of the case and the mitigation offered exercised discretion and imposed a sentence of three years' imprisonment on count I, sentence of two years' imprisonment on count II, sentence of two years' imprisonment on count III and a sentence of two years' imprisonment on count IV and ordered that the sentences run concurrently. The Respondent submitted that the sentences were lenient and the Applicant was now seeking more leniency.
9. The Respondent submitted that failure by the trial court to indicate that it had taken into account the time in custody did not render the sentence defective. They urged that the sentence was a product of judicial discretion by the trial court.

Analysis and determination

10. This court's revisionary jurisdiction is provided for under Section 362 of the [Criminal Procedure Code](#) which provides:-

“ 362. The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.”
11. I called for the trial file to consider the proceedings and orders thereon.



12. The record in this case shows that the Applicant and his co-accused (now deceased) were presented before the trial court (Hon. Kinyua, R.M) for plea on 4th July, 2024. They pleaded guilty to the charges. The Prosecutor sought time to present the facts and the court set the date of 18th July, 2024.
13. On 1st August 2024, the Accused took plea afresh and still pleaded guilty. A Sentencing hearing was held on 27th August, 2024, and the court delivered sentence on 1st October, 2024.
14. The Applicant was sentenced on 1st October 2024. He took plea on 4th July, 2024 meaning that he was in custody for 3 months while the case was going on. It is true as submitted by the Respondents that the penalty for the charges faced by the Applicant were hefty and that by giving a lenient sentence, the trial court must have taken into consideration all he factors including pre-trial custody. They relied on the case of *DS v. Republic* [2011] KEHC 2502 KLR
15. Sentencing is eminently at the discretion of the trial court. This principle was emphasized by the Court of Appeal in the case of *Bernard Kimani Gacheru -v- Republic* [2002] eKLR where the court held as follows:-

“It is now settled law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, 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, some wrong material, or acted on a 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 stated is shown to exist.”

16. From my appraisal of the proceedings and evaluation of the record, I have found nothing irregular about the proceedings or the sentence. Indeed, I am persuaded that the sentence was very lenient.
17. I have however considered that the Applicant was a senior citizen. While not reducing the sentence, I order that his sentence shall be deemed to have commenced from the time of his arrest being 2nd July, 2024. His Application therefore succeeds.

RULING DELIVERED, DATED AND SIGNED AT CHUKA THIS 30TH DAY OF SEPTEMBER, 2025.

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R. LAGAT-KORIR

JUDGE

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

