

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION
CRIMINAL CASE NO. 31 OF 2018

MUTUA KIVUVA [Suing as the chairman and on behalf
of the Akitutu
Clan].....**APPLICANT**
CYNTHIA MUMBUA KYALO.....
.....**CONVICT**

VERSUS

REPUBLIC.....**RESPONDEN**
T

RULING

1. The applicant's notice of motion dated 13th January 2025 seeks to *"commute the sentence of imprisonment of 10 years imposed by the High Court; and, that the convict be now set free"*.
2. The grounds are pleaded in the affidavit of *Mutua Kivuva* who avers that he is the Chairman of Akitutu Clan. They can be summarized into three: Firstly, that since the sentence on 4th March 2020, the deceased's clan and the convict's clan have performed several ceremonial rites and made amends according to the Kamba customary rites.

3. Secondly, that the accused person is highly remorseful, and, thirdly, that she has served a substantial part of her sentence and it is in the interest of justice that she be released to finalize the settlement of the blood money.
4. The application has fervently contested by the Republic through the grounds of opposition. Their pith is that the court has no jurisdiction.
5. On 22nd July 2025, I heard further submissions from her learned counsel, *Mr. Muia*, and the reply by learned prosecutor, *Ms. Kigira*.
6. My view is as follows. The convict was charged with *murder* contrary to section 203 as read with section 204 of the **Penal Code** the particulars being that on the 9th June 2018 at about 11:00 p.m. in Pipeline area within Nairobi County, she murdered *Nicholas Kiiti Mbiti*.
7. She pleaded not guilty and by a judgment delivered on 6th December, 2019, the court (*Lesiit J*) reduced the offence to the lesser but cognate offence of *manslaughter* contrary to section 202 as read with section 205 of the **Penal Code**. She was sentenced to 10 years imprisonment.

8. I have no cause to doubt that there has been reconciliation or that the convict is remorseful. It is also true that she has served a substantial part of the sentence. Although I empathize with her, this court lacks *jurisdiction* to “commute” or review the sentence meted out by a judge of concurrent jurisdiction. Any further remedy lies with the Court of Appeal.
9. The upshot is that the notice of motion dated 13th January 2025 is highly irregular and is hereby *dismissed*.

It is so ordered.

DATED, SIGNED and DELIVERED at **NAIROBI** this 30th day of September 2025.

KANYI KIMONDO
JUDGE

Ruling read virtually on Microsoft Teams in the presence of-

Ms. Kigira for the Republic instructed by the office of the Director of Public prosecutions.

Mr. Muia for the applicant & convict instructed by Janet, Jackson & Susan Advocates.

Mr. E. Ombuna, Court Assistant.