



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Kamama v Republic (Miscellaneous Application E117 of 2024)
[2025] KEHC 13324 (KLR) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13324 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
MISCELLANEOUS APPLICATION E117 OF 2024
RC RUTTO, J
SEPTEMBER 25, 2025**

BETWEEN

PETER MUTUKU KAMAMA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant by way of a Notice of Motion Application dated 2nd October 2024, has brought this Application under Articles 50(2)(p), (6) and 165 of the Constitution as well as sections 4(2) and 333 (2) of the Probation Offenders Act. He seeks the following orders:
 1. ... Spent;
 2. That the Honourable Court be pleased to consider the directives in Isaac Ndegwa Kimaru & 17 others vs. Attorney General & another; Kenya National Human Rights and Equality Commission (Interested Party) [2022] eKLR and revise the sentence of President's pleasure the applicant is serving to time served;
 3. That the Honourable Court be pleased to make appropriate orders and directions upon taking into account the mental status of the applicant during trial and the period the applicant has been detained in prison at the president's pleasure;
 4. That the Honourable Court be pleased to consider time spend in custody and when giving sentence to run from the date of arrest pursuant to section 333 (2) of the Criminal Procedure Code;
 5. That the applicant be exempted from paying costs as he is a pauper;
 6. That the Honourable Court be pleased to grant any other order (s) that it may deem fit.



2. The application is supported by the grounds set out on its face and the applicant's supporting affidavit. The facts giving rise to the application are that the applicant was charged in Machakos High Court HCCRC No. 10 of 2001 with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code*. Upon conclusion of the trial, the applicant was found guilty but insane and was sentenced to detention at the President's pleasure by RPV. Wendoh, J. on 27th October 2006.
3. The sentence of detention at the President's pleasure has since been declared unconstitutional and affected individuals were directed to seek revisions of their sentence from their respective trial courts.
4. The applicant now seeks a revision of his sentence to a determinate term preferably equivalent to time already served. He relies on the decision in *Isaac Ndegwa Kimaru & 17 others vs. Attorney General & another; Kenya National Human Rights and Equality Commission (Interested Party)* (*supra*) which was implemented in *HHM vs. Director of Public Prosecutions & another* [2023] KEHC 2620 (KLR). He further explains that he was unable to appeal his conviction and sentence due to his ongoing psychiatric treatment and attendance at clinics.
5. Pursuant to the orders of this court dated 13th February 2025, the applicant underwent a mentally assessed on 7th May 2025. Mr. James Ndung'u, a Kenyan registered psychiatric nurse examined the applicant at Kamiti Prison Hospital. The applicant was diagnosed with catatonic schizophrenia moderated by medication. The medical report, dated 7th May 2025 filed in court indicates that the applicant is currently stable on medications and able to follow his daily routines and activities with minimal supervisions.
6. The application was heard on 27th May 2025 with no objection from the prosecution. The applicant reiterated the contents of his application and emphasized that, following the decision in *Isaac Ndegwa Kimaru & 17 others vs. Attorney General & another; Kenya National Human Rights and Equality Commission (Interested Party)* (*supra*), persons previously sentenced to detention at the president's pleasure were to be produced before the court for re-sentencing. He also stated that he is a person with a disability and should be treated as such.
7. This Court takes cognizance of the decision in *Isaac Ndegwa Kimaru & 17 others vs. Attorney General & another; Kenya National Human Rights and Equality Commission (Interested Party)* (*supra*) where it was held that detaining persons with mental health challenges under the sentence of president's pleasure after a finding of 'guilty but insane' is unconstitutional. That decision remains the position as it has not been reversed or overturned. Pursuant to the declaration, the court further directed that such persons appear before the court for appropriate orders and directions upon taking into account the mental status of the accused and the period the accused has been detained in prison at the President's pleasure.
8. In the present matter, the applicant does not challenge the conviction. Taking the above jurisprudence into account, as well as the fact that the appellant has been in custody since 2001, when he was arraigned before the trial court, coupled with the fact that the applicant is stable on medications following his diagnosis on catatonic schizophrenia, and adding to the fact that the applicant, to the knowledge of the court, has faced no disciplinary issues while in prison. These factors taken together warrants a revision of the sentence.
9. Consequently, the Court hereby sets aside the indeterminate sentence of detention at the President's pleasure and substitute it with a determinate sentence of 24 years imprisonment. Given that the applicant has already served this period since he was arraigned in court, the court directs that he be released forthwith unless he is otherwise lawfully held.



10. It is so ordered.

DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 25TH DAY OF SEPTEMBER, 2025.

RHODA RUTTO

JUDGE

In the presence of;

.....Applicant

.....Respondent

Selina - Court Assistant

