



**Njoka alias Mwiathi v Republic (Criminal Miscellaneous Application
E047 of 2024) [2025] KEHC 13590 (KLR) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13590 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
CRIMINAL MISCELLANEOUS APPLICATION E047 OF 2024**

**RL KORIR, J
SEPTEMBER 25, 2025**

BETWEEN
BONIFACE KIMATHI NJOKA ALIAS MWIATHI APPLICANT
AND
REPUBLIC RESPONDENT

RULING

1. Boniface Kimathi Njoka alias Mwiathi (Accused) was charged with murder contrary to section 203 as read with Section 204 of the Penal Code. He was accused of the murder of Jacidah Murugi Ileri alias Jedida Murugi.
He faced a second count of murder in which the victim was Megan Ivy Wakio alias Nyakio Murugi.
2. The Accused was arraigned to face the charges on 26th July 2022. He pleaded not guilty and the case was scheduled for pre-trial. Subsequently, the Accused made a plea offer to the Director of Public Prosecution and the same was rejected.
3. On 21st August 2023, the Accused opted to plead guilty to the murder charge, the court after duly warning him of the consequences of such plea, allowed him to plead afresh. He pleaded guilty to the two counts. He confirmed the facts as true and was convicted accordingly.
4. A sentencing hearing was conducted in which the court heard both the Accused in mitigation and the Prosecution counsel, and considered a pre-sentence probation report.
5. At the conclusion of the case, Gitari J sentenced the Accused to serve 50 years' imprisonment on each count. The two sentences were stated to run concurrently.
6. The Accused (now Applicant) has approached this court to reconsider his sentence. He has filed a Notice of Motion dated 30th July 2024 seeking the following orders:-



- i. That the court be pleased to order that the sentence run from the date of arrest and pre-trial custody as required by section 333(2) of the Criminal Procedure Code.
 - ii. That The Honourable court be pleased to resentence him to a lesser sentence.
7. The Application is brought on the grounds that this court has jurisdiction to review its decision on sentence. That the sentence of 50 years was harsh and excessive, and that recent jurisprudence placed life sentence at a maximum of 30 years and; that the Applicant was deeply remorseful and prayed for a sentence that would allow him to be released with time to go and contribute to the common good of society.
8. The Applicant stated in his supporting affidavit that he was 48 years old, and a family man with 2 children who required his support. He cited Articles 22, 23 and 165 of *the Constitution* and the case of Ali Abdalla Mwanza -vs Republic, Mombasa Criminal Appeal No. 259 of 2012.
9. The Application was canvassed through written submissions. The Applicant's submissions were dated 20th February 2025, while the Respondent's submissions were dated 21st July, 2025.

Analysis and Determination:

10. I have considered the Application and the respective submissions of the parties. Two issues arise for my determination being, whether this court has jurisdiction to reconsider the merits of a sentence meted by a court of equal and competent jurisdiction, and; whether failure to factor in the period spent in pre-trial custody rendered the sentence invalid.
11. The Applicant's main ground is that the sentence of 50 years was harsh and excessive. He submitted that such sentence contravened the spirit of *the Constitution* under Article 28 and 29 and that Article 23 empowered the court to grant appropriate reliefs. The Applicant submitted that this court had the power to exercise supervisory jurisdiction under Section 362 to 366 of the Criminal Procedure Code to review his sentence. He placed reliance on the famous Muruatetu case which required courts to take into consideration mitigating circumstances. He also relied on Bethwel Wilson Kibor -v- Republic [2009] eKLR and Ahamad Abolfathi Mohammed and Another vs. Republic [2018] eKLR. He placed further reliance on the Judiciary Sentencing Policy Guidelines which required that courts take into consideration the period spent in pre-trial custody.
12. The Applicant further submitted that his sentence of 50 years was higher than a life sentence. He submitted that recent jurisprudence from the Court of Appeal called for determinate sentences in place of the life sentence. He cited cases of Ali Abdalla Mwanza v. Republic [2018] eKLR and Evans Nyamari Ayako v- Republic, Criminal Appeal No.22 of 2018
13. The Respondent on the other hand submitted that failure to specifically state that the period spent in pre-trial custody did not render the sentence invalid. They placed reliance on the case of Ahamad Abolfathi Mohammed & Another Vs- Republic [2018] eKLR.
14. The Respondent further submitted that the offence of murder attracted a death sentence and that the sentence of 50 years' imprisonment demonstrated a reduction on the said sentence. They cited the case of DS V. Republic [2022] KEHC 2502 (KLR).
15. There was no dispute on the background to this Application. To recap, the Applicant was charge with two counts of murder. He pleaded guilty to both counts and was sentenced to 50 years' imprisonment on each count. The sentences would run concurrently. The case was heard by Gitari J. a Judge of equal and concurrent jurisdiction.



16. Section 362-366 of the Criminal Procedure Code which the Applicant relied on gives the High Court power of revision. This power is however limited to decisions of the subordinate court and quasi judicial tribunals. Section 362 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.”

17. It was clear therefore that the law did not give supervisory jurisdiction to a Judge over a Judge of competent and concurrent jurisdiction. Gitari J. who meted the sentence was a Judge of equal and concurrent jurisdiction. It was clear that the recourse that the Applicant was to appeal his sentence to the Court of Appeal. I am persuaded by Lesiit J. (as she then was) in *Moses Dola vs. Republic* [2021] KEHC 6180 (KLR) where she held:-

“The law is clear that the period a person was held in custody prior to being sentenced shall be taken into account. The sentence in this case was imposed by Lagat-Korir, J, a court of parallel jurisdiction, which was the trial court in this matter. That means that if the Applicant was aggrieved in the manner in which the period he spent in custody before sentence was considered, or not, his recourse is not before this court. His grievance should be addressed on appeal before the Court of Appeal.

He cannot return back to this same court to consider his grievance, for two reasons. First and most, it is this court which passed the impugned sentence. Having delivered itself on the matter, this court is *functus officio*. Secondly, the grievance he now has should be a ground of appeal which can only be considered on appeal before the Court of Appeal.”

18. In the instant case, the Applicant pleaded guilty and he can only appeal sentence as provided by Section 348 of the Criminal Procedure Code.

19. For the comfort of the Applicant however, I have looked at the trial proceedings. The sentencing proceedings were held where the Accused gave his mitigation which he has restated in this Application. The court in considering sentence stated:-

“The murder in this case was most foul. It was directed to innocent women and more so on an innocent child aged five years who the Accused with all his strength could not spare even as she ran away for dear life. These women did not have to die in the gruesome and cruel manner in which they died. The post mortem reports shows that the Accused cut them several times and decapitated the five year old child for no reason at all...”

20. It was clear to this court that the Applicant’s mitigation was considered contrary to his submissions that it was not. It was also clear that he was not granted the mandatory death sentence implying that the court was well seized of the principles set out by the Supreme Court in the case of *Francis Kariuki Muruatetu & another v. Republic & 5 others* Petition No. 6 of 2016 [2016] eKLR which the Applicant sought to rely on in this Application.

21. With respect to the period spent in pre-trial custody, I have observed as follows. The Applicant was taken to court on first appearance on 20th July 2022. He subsequently took plea on 26th July, 2022. His



sentence is dated 19th September, 2023. He was in pre-trial custody for about 13 months. The one year period would not dent the 50 year period by any significant margin as desired by the Applicant.

22. In the case of Ahamad Abolfathi Mohammed & Another Vs. Republic [2018] eKLR which the Applicant relied on, the court explained that “Taking into account” the period spent in custody must mean considering that period so that the imposed sentence is reduced proportionately by the period already spent in custody. For the present case however, the Applicant’s application, as earlier demonstrated, goes beyond the seeking inclusion of the pre-trial custody period as he seeks to have the entire sentence overturned.
23. In the end, the Application lacks merit and is dismissed. The Applicant’s recourse lies to the Court of Appeal.

Orders accordingly.

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

.....

R. LAGAT-KORIR

JUDGE

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

