



**Kamau v Republic (Miscellaneous Criminal Application E256 of 2024)
[2025] KEHC 14520 (KLR) (16 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14520 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MISCELLANEOUS CRIMINAL APPLICATION E256 OF 2024**

**JM NANG'EA, J
OCTOBER 16, 2025**

BETWEEN

DANIEL MUGO KAMAU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. By this Notice of Motion dated 27th December 2024 the Applicant seeks orders as hereunder:-
 1. That the honourable court be pleased to substitute my current sentence of imprisonment that am now serving with a probation sentence.
 2. That the honourable court be pleased to invoke the provisions of Section 362, 363 and 364 (b) of the Criminal Procedure Code and provisions under the *Probation of Offenders Act* and review the balance of my sentence to a non-custodial sentence.
3. That this honourable court has jurisdiction to determine this petition under the provisions of article 165(3) (9) of the new Constitution of Kenya 2010 and the relevant provisions under the probation of offenders acts respectively.
4. That am utterly remorseful and repentant of what really happened and if given another chance, I will not repeat such an act again.
5. That the application is further supported by the annexed affidavit of NAK/1540/23/LS Daniel Mugo Kamau amongst other grounds that shall be adduced during the hearing of this petition,”(sic)
2. The Applicant avers in his affidavit supporting the application that he had been charged in this court’s Criminal Case Number E37 of 2018 with the offence of Murder contrary to Section 203 as read with section 204 of the Penal Code. He was convicted after full hearing and sentenced to 15 (fifteen) years



imprisonment. He now applies for substitution of the sentence for that of Probation, expressing his remorse.

3. I have perused the Applicant's and the Respondent's Submissions on the application. The Applicant pleads that he had reformed and seeks re-sentencing for that reason. The Republic opposes the application noting that the sentence imposed is legal. Citing case law in Daniel Otieno Otacha vs Republic (2019) eKLR, the Prosecution Counsel submits that this court has no jurisdiction to interfere with the decision of a court of concurrent jurisdiction that sentenced the Applicant.
4. I agree with the Republic that there is no legal basis for substitution of the custodial sentence with a non-custodial one. The maximum sentence for the offence is death but the Applicant only got a prison term of 15 years. Besides, this court has no jurisdiction to vary the sentence of a court of equal jurisdiction, as rightly pointed out by the Prosecution Counsel. Perhaps the appropriate remedy available to the Applicant is to lodge a late appeal to the Court of Appeal.
5. The Application is therefore without merit and is dismissed.

J. M. NANG'EA, JUDGE.

RULING DELIVERED THIS 16TH DAY OF OCTOBER, 2025 IN THE PRESENCE OF:

Mr Wakasyaka for the DPP

Applicant, present

Court Assistant (Jeniffer)

