



**Agwata v Republic (Miscellaneous Criminal Application
E037 of 2024) [2025] KEHC 15254 (KLR) (17 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15254 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
MISCELLANEOUS CRIMINAL APPLICATION E037 OF 2024**

**WM MUSYOKA, J
OCTOBER 17, 2025**

BETWEEN

NORMAN OWINO AGWATA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant herein had been charged, in Busia CMCCRC No. 1028 of 2010, with robbery with violence, contrary to section 295, as read with section 296(2), of the Penal Code, Cap 63, Laws of Kenya. He was convicted, and sentenced to death. He appealed in Busia HCCRA No. 2 of 2012, and his appeal was dismissed. The death sentence was later commuted to life imprisonment.
2. He moved this court, by an application, dated 30th November 2023, in Busia HC Miscellaneous Application No. E030 of 2023, seeking re-sentencing. That application was canvassed on its merits. A determination was rendered, on 20th September 2024, that the case was not deserving of non-custodial measures, but the life sentence was reduced to 30 years imprisonment, on the strength of *Evans Nyamari Ayako vs. Republic Kisumu CACRA No. 22 of 2018 (Okwengu, Omondi & J. Ngugi, JJA)*.
3. He has now come back to court, in the application dated 8th October 2024, seeking reckoning of the period spent in pre-trial custody, in the calculation of the period to be spent in prison custody.
4. I am unable to grant what the applicant prays for.
5. Firstly, according to the Supreme Court, in *Republic vs. Manyeso [2025] KESC 16 (KLR) (Mwilu, DCJ&VP, Ibrahim, Wanjala, Ndung'u & Lenaola, SCJJ)*, and *Republic vs. Ayako [2025] KESC 20 (KLR)(Mwilu, DCJ&VP, Ibrahim, Wanjala, Ndung'u & Lenaola, SCJJ)*, the sentences prescribed in various penal statutes, including the Penal Code, with respect to the death sentence, life imprisonment and statutory minimum sentences, are still lawful and constitutional.



6. Secondly, the applicant has already benefitted from reduction of sentence. He was sentenced to death, which is the sentence that is prescribed in the Penal Code, for the offence for which he was charged and convicted. Presidential clemency reduced the sentence to life imprisonment. The life sentence was, in turn, reduced to 30 years, following *Evans Nyamari Ayako vs. Republic Kisumu CACRA No. 22 of 2018 (Okwengu, Omondi & J. Ngugi, JJA)*.
7. Thirdly, the Supreme Court, in *Republic vs. Manyeso [2025] KESC 16 (KLR) (Mwilu, DCJ&VP, Ibrahim, Wanjala, Ndung'u & Lenaola, SCJJ)*, and *Republic vs. Ayako [2025] KESC 20 (KLR) (Mwilu, DCJ&VP, Ibrahim, Wanjala, Ndung'u & Lenaola, SCJJ)*, has declared *Evans Nyamari Ayako vs. Republic Kisumu CACRA No. 22 of 2018 (Okwengu, Omondi & J. Ngugi, JJA)*, which translated life imprisonment to 30 years, bad law, and upheld the death sentence and life imprisonment as lawful and constitutional sentences.
8. Fourthly, it follows that, if the decisions in *Republic vs. Manyeso [2025] KESC 16 (KLR) (Mwilu, DCJ&VP, Ibrahim, Wanjala, Ndung'u & Lenaola, SCJJ)*, and *Republic vs. Ayako [2025] KESC 20 (KLR) (Mwilu, DCJ&VP, Ibrahim, Wanjala, Ndung'u & Lenaola, SCJJ)*, had preceded *Evans Nyamari Ayako vs. Republic Kisumu CACRA No. 22 of 2018 (Okwengu, Omondi & J. Ngugi, JJA)*, the applicant would still be serving the life sentence, following that Presidential clemency.
9. In view of *Republic vs. Manyeso [2025] KESC 16 (KLR) (Mwilu, DCJ&VP, Ibrahim, Wanjala, Ndung'u & Lenaola, SCJJ)*, and *Republic vs. Ayako [2025] KESC 20 (KLR) (Mwilu, DCJ&VP, Ibrahim, Wanjala, Ndung'u & Lenaola, SCJJ)*, there would be absolutely no basis for re-visiting the sentence that the applicant benefitted from in *Busia HC Miscellaneous Application No. E030 of 2023*. Consequently, the application herein is hereby dismissed.
10. The Deputy Registrar shall cause a certified copy of this ruling to be made available to the applicant, for information, through the officer commanding the prison where he is serving sentence. Thereafter, this file shall be closed. Orders accordingly.

DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, ON THIS 17TH DAY OF OCTOBER 2025.

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Mr. Norman Owino Agwata, the applicant, in person.

Advocates

Mr. Tony Onanda, instructed by the Director of Public Prosecutions, for the respondent.

