



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CRIMINAL REVISION E229 OF 2024**

**EVANS KIPKOECH**-----  
**APPLICANT**

**-VERSUS-**

**REPUBLIC** -----  
**RESPONDENT**

**RULING**

1. The Applicant brings this undated Notice of Motion purportedly under the provisions of **Sections 379(4), 333(2), 356 and 357 of the Criminal Procedure Code as well as Article 48 of the Constitution.** Reliefs sought are as hereunder;-

**1. Spent.**

**2. THAT the applicant be admitted to a probatory/non-custodial sentence on the remaining period of the sentence. (sic)**

**3. Spent.**

2. The Applicant swore an affidavit in support of the Motion. He avers *inter alia* that he was charged with and convicted before the lower court of the offence of Entering **into a protected area without a permit or any other lawful exemption contrary to Section 102(1) (a) as read with Section 102 (h) of the Wildlife Conservation and Management Cap 376 Laws of Kenya.** He was sentenced to 4 (four) years imprisonment and, while he is not opposed to the sentence, he states that he has reformed and has obtained training in Theology and Welding while in prison.

3. I have considered the Application, and the submissions filed. I have also perused the trial court's record. The Applicant and others were so charged and convicted before the lower court in **NAKURU CHIEF MAGISTRATE'S COURT'S CRIMINAL CASE NO. E2666 OF 2023**, on their own pleas of guilty in respect

to two counts. The second count the Applicant omits to mention is the offence of **undertaking extractive activity in a Wildlife Protected Area without a permit and any other lawful exemption, contrary to section 102(g) of the Wildlife Conservation and Management Act**. Each was fined Ksh, 200,000 in default of payment of which the convicts would serve out 2 (two) years imprisonment.

4. **Sections 362, 364 and 365 of the Criminal Procedure Code** empower this court to call for a subordinate court's record with a view to satisfying itself as to the legality, correctness or propriety of an order or decision made by the court, and issue appropriate orders or directions.
5. The Applicant herein is not contending that the sentence meted out against him is illegal. Rather, he wants variation thereof to a non-custodial one considering the mitigation statements put forth. The Supreme Court in the famous case of **Francis Muruatetu & Others vs Republic** has outlawed the mandatory nature of the death sentence in cases of murder brought under

**section 203 as read section 204 of the Penal Code.**

The apex court introduced the exercise of discretion in sentencing offenders in such cases guided by peculiar facts and circumstances attending each case. The Court proceeded to allow for re-sentencing of convicts on death row for murder in line with the principles set out in the landmark case.

6. Other superior courts subsequently applied the same principle in other cases including **Kathewa Laichena vs Republic (2018) eKLR** and **William Okungu Kittiny vs Republic (2018) eKLR** to outlaw mandatory or minimum sentences provided for by some laws including the **Penal Code** and the **Sexual Offences Act**.
7. Does the same reasoning apply to minimum sentences prescribed for offences under the **Wildlife Conservation & Management Act** with which the Applicant has been charged, convicted and sentenced?
8. The Supreme Court has clarified in its latest decision *to wit*; **Joshua Gichuki Mwangi & Others** in **Petition No. E018 of 2023** that any challenge to the constitutional validity of mandatory sentences for other capital offences

other than murder, or other minimum sentences that take away the court's discretionary power to decide an appropriate sentence for an offence, is welcome for determination by the High Court, and also the Court of Appeal where the High Court agrees with the Petitioner(s). This challenge is, however, to be mounted in a proper substantive constitutional Petition.

9. This court will not therefore treat this Application as the Petition contemplated by the Supreme Court in **Joshua Gichuki Mwangi** *supra*. Moreover, if the Applicant thinks that the sentence imposed by the trial court is excessive or severe in the obtaining circumstances, the proper remedy would be an Appeal and not revision of the lower court's order as craved in this Application. The sentence meted out by the trial court is legal and is the minimum one prescribed in law. Perhaps the Applicant may only benefit from the Judiciary's regular Prison Decongestion Programme when it is undertaken.
10. In the premises, this Application is dismissed.

**J. M. NANG'EA, JUDGE.**

**Ruling dated, signed and delivered at Nakuru this 30<sup>th</sup> day of October 2025 in the presence of:**

**Mr Wakasyaka for the Director of Public Prosecutions (DPP).**

**Applicant**

**The Court Assistant (Jeniffer)**

**J. M. NANG'EA, JUDGE.**

Original