

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

(CORAM: R. MWONGO, J.)

CRIMINAL REVISION APPLICATION NO. E258 OF 2025

SARAH MBUYA.....APPLICANT

-VERSUS-

REPUBLIC.....RESPONDENT

JUDGMENT

The Application

1. Through an application dated 22nd April 2025, the applicant is seeking the following orders:
 - a. That this Honourable court be pleased to reduce the sentence imposed or give a non-custodial sentence; and
 - b. That the Honourable court be pleased to make any other orders as it shall deem fit in the circumstances.
2. The application is supported by facts deposed on its face, that the applicant is the mother of a 22-year-old daughter who is suffering from wasting syndrome. That her daughter was released from hospital on grounds that she should be turned every 2 hours, they provide a ripple mattress and give assisted feeding. Currently, this ailing daughter is under the care of her grandmother who suffers from psychiatric problems.
3. The applicant stated that before her incarceration, she was the sole breadwinner of her family and the wellbeing of her daughter depends on her. She stated that the family of the deceased relates well with her so far. She produced a photograph of her ailing daughter in support of her application.

Social Inquiry Report

4. Following the application, the court requested the Probation Officer for a Social Inquiry Report which was carried out on the applicant's background and circumstances. A report dated 09th September 2025 was filed. In it, the Probation Officer stated that one of the applicant's children is an invalid who needs constant personal care but not much is offered. One of her other children dropped out of

school to care for the other 2 but she got overwhelmed and does not offer the full support needed by the ailing daughter. As at the time of her incarceration, the applicant was living at her maternal home and she was the sole breadwinner of her family.

5. The report revealed that the family members of the deceased have come to terms with the death of their kin and they have no issue if the court reconsiders the applicant's sentence to a non-custodial one. The local administration also supports a non-custodial sentence if the court deems it fit to revise the sentence in that manner.

Background of the Case

6. The applicant was charged with murder contrary to section 203 as read with section 204 of the Penal Code in Embu HCCRC 19 of 2020, and was convicted. She presented her mitigation before sentencing and the court recorded and considered it before sentencing her to 7 years imprisonment. The court noted during sentencing that '*...this is a case where the court is called to a higher calling of tempering justice with mercy...*'
7. The court also took note of the fact that the applicant takes care of her 4 children and her mother - who was also one of the accused persons - who was sentenced to 3 years' probation.
8. The court ordered that the time spent in custody be deducted from the sentence. Through a ruling delivered on 20th May 2025, the court found that the applicant has spent 132 days/ 18 weeks and 6 days in custody pending the hearing. This duration was incorporated into the sentence term imposed.

Issues for determination

9. The issues for determination are:
 - a. Whether the court bears jurisdiction to entertain the application; and
 - b. Whether the court should grant the orders prayed.

Analysis and Determination

10. The revisionary power of the High Court is drawn from Article 167(6)&(7) of the Constitution which provides:

“(6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.

(7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.”

11. Section 362 of the Criminal Procedure Code provides as follows on the High Court’s supervisory jurisdiction:

“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.”

12. In a murder trial, the High Court sits as a court of original jurisdiction and in this case, it passed the sentence at first instance. There is provision for resentence hearings following the findings of the Supreme Court in **Muruatetu & another v Republic; Katiba Institute & 5 others (Amicus Curiae) [2017] KESC 2 (KLR) (Muruatetu 1)**. Through this decision, the Supreme Court, by way of jurisprudence, stated that the High Court has jurisdiction to rehear sentences in murder cases. Following **Muruatetu 1**, Paragraph 4.8.18 of the Judiciary Sentencing Policy Guidelines 2023 emerged and it provides:

“Resentencing cases shall be handled by the ‘Sentencing Court’ – e.g., if the last court that sentenced the convict was the Court of Appeal, then the resentencing hearing shall also be handled at the Court of Appeal and not a lower court. This applies mutatis mutandis to cases in either superior or inferior courts.”

13. In **Muruatetu & another v Republic; Katiba Institute & 4 others (Amicus Curiae) [2021] KESC 31 (KLR) (Muruatetu 2)**, the Supreme Court gave directions on resentencing as follows:

“9. To obviate further delay and to avoid confusion, the court issued the following guidelines: -

- a) *The decision of Muruatetu and the guidelines herein were applicable to sentences of murder under sections 203 and 204 of the Penal Code only.*
- b) *The Judiciary Sentencing Policy Guidelines were to be revised in tandem with the new jurisprudence enunciated in Muruatetu.*
- c) *All offenders who had been subject to the mandatory death penalty and desired to be heard on sentence were entitled to a re-sentencing hearing.*
- d) *Where an appeal was pending before the Court of Appeal, the High Court would entertain an application for re-sentencing upon being satisfied that the appeal had been withdrawn.*
- e) *In the re-sentencing hearing, the court had to record the prosecution's and the appellant's submissions under section 329 of the Criminal Procedure Code, as well as those of the victims before deciding on a suitable sentence.*
- f) *An application for re-sentencing arising from a trial before the High Court could only be entertained by the High Court, which had jurisdiction to do so and not the subordinate court.*
- g) *In a sentence re-hearing for the charge of murder, both aggravating and mitigating factors such as the following, would guide the court:*
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- i. Age of the offender;*
 - ii. Being a first offender;*
 - iii. Whether the offender pleaded guilty;*
 - iv. Character and record of the offender;*
 - v. Commission of the offence in response to gender-based violence;*
 - vi. The manner in which the offence was committed on the victim;*
 - vii. The physical and psychological effect of the offence on the victim's family;*
 - viii. Remorsefulness of the offender;*
 - ix. The possibility of reform and social re-adaptation of the offender; and,*
 - x. Any other factor that the court considered relevant.*
- h) *Where the appellant had lodged an appeal against the sentence alone, the appellate court would proceed to receive submissions on re-sentencing.*

i) The guidelines would be followed by the High Court and the Court of Appeal in ongoing murder trials and appeals. They would also apply to sentences imposed under section 204 of the Penal Code before the decision in Muruatetu.”

14. Looking at these guidelines, it is clear that the High Court’s revisionary powers expand to its own findings on sentence where it was exercising its original jurisdiction in murder trials. Therefore, this court bears the relevant jurisdiction to entertain the applications.

15. The second issue is whether the sentences should be reviewed to a non-custodial sentence. **Muruatetu 2** gave guidelines on what to consider before reviewing a sentence and the same are cited hereinabove. Some of the considerations are whether the applicant is a first offender, her contribution to the commission of the offence, remorsefulness, possibility of reform and social re-adaptation or any other factor that the court may find relevant.

16. In this case, the Social Inquiry Report vouched for the applicant. It stated that the offender and the victim’s family relate well and they have no problem if the applicant is given a non-custodial sentence in light of her children’s present circumstances. The applicant was a first offender who before the offence, lived peaceably in the community. The local administration also had no problem with her being given a non-custodial sentence wither.

17. Since there is no appeal pending before the Court of Appeal and the application is unopposed, there are some factors herein that persuade review of the sentence to a non-custodial one.

Conclusions and Disposition

18. In the circumstances, I am of the view that the appropriate orders to give are that the Applicant be granted a non-custodial sentence for the last 3 years of her sentence.

19. For the avoidance of doubt, the last 3 years of the applicant’s sentence begin on 09th November 2025 and ends on 09th November 2028. During this period, the applicant shall be released to serve a non-custodial sentence under supervision of the Probation Officer who shall prepare and facilitate Community Service Programme, which programme shall be availed to the Court.

20. Orders accordingly.

Delivered, dated and signed at Embu High Court this 29th day of October, 2025.

**R. MWONGO
JUDGE**

Delivered in the presence of:

1. Applicant Present in Court
2. Ms. Nyika for the Respondent
3. Francis Munyao - Court Assistant