



REPUBLIC OF KENYA



KENYA LAW
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**Oweri & 3 others v Republic (Criminal Revision E079 of 2025)
[2025] KEHC 15026 (KLR) (14 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15026 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL REVISION E079 OF 2025**

**JM NANG'EA, J
OCTOBER 14, 2025**

BETWEEN

**DENNIS JUMA OWERI 1ST APPLICANT
MICHAEL KIPTII RONO 2ND APPLICANT
DENNIS KAMAU NDUNG'U 3RD APPLICANT
BONIFACE MUSYOKA 4TH APPLICANT**

AND

REPUBLIC RESPONDENT

RULING

1. The Applicants bring this Notice pursuant to the provisions of Sections 362, 364 and 365 of the Criminal Procedure Code as well as Articles 25 (c), 27, 28, 50 (2) (q) and 159 of *the Constitution*. Reliefs sought are as hereunder;-
 1. Spent.
 2. That this Honourable Court be pleased to call for and examine the record in Nakuru CM Criminal Case E159 of 2025 for the purpose of satisfying itself as to the correctness, legality, propriety and regularity of the sentence passed against the Applicants.
 3. That this Honourable Court be pleased to review, vary, and/or revise the sentence imposed upon the Applicants and substitute it with a more lenient appropriate, and just sentence, including a non-custodial sentence or any other orders the Court may deem fit in the interests of justice.
 4. That the costs of this application be in the cause.



2. The Applicants swear a joint affidavit in support of the Motion. They aver inter alia that the lower court convicted them in the said Nakuru Criminal Case No. E159 of 2025 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(1) (h) of the Wildlife Conservation and Management Cap 376 Laws of Kenya. They were each sentenced to 4 (four) years imprisonment, or an alternative fine of Kshs. 400,000/= (four hundred thousand) each. They complain of inability to pay the fine, adding that they pleaded guilty after the Investigating Officer advised them that the plea could lead to a lenient or non-custodial sentence.
3. The Applicants express remorse and urge the court to consider that they are first offenders and had cooperated with the investigators. They complain that the sentence meted out against them is excessive and was not guided by the Supreme Court's jurisprudence in the now famous decision in the case of Francis Karioko Muruatetu and Others; The Court of Appeal's position on maximum sentences and the Judiciary Sentencing Policy Guidelines 2023.
4. I have considered the Application and perused the trial court's record. Indeed, the Applicant and others were so charged, convicted and sentenced before the lower court.
5. 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.
6. The Applicants herein are not contending that the sentence meted out against them is illegal. Rather, they want variation thereof considering the mitigation statements put forth. The Supreme Court in the 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.
7. 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](#).
8. The Applicants herein seem to take the position that the same reasoning applies to minimum sentences prescribed for offences under the Wildlife Conservation & Management Act with which they have been charged and sentenced.
9. The Supreme Court has, however, clarified in its latest decision on this controversy 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 and not vide a Miscellaneous Criminal Application such as brought by the Applicants herein. Because of the importance of such a Petition, proper Respondents would include the Director of Public Prosecutions, the Attorney General and other appropriate Interested Parties as may be identified.
10. This court will not therefore treat this Application as the Petition contemplated by the Supreme Court in Joshua Gichuki Mwangi supra. Moreover, if the Applicants think 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.

11. In the premises, this Application is dismissed.

J. M. NANG'EA, JUDGE.

RULING DATED, SIGNED AND DELIVERED AT NAKURU THIS 14TH DAY OF OCTOBER 2025.

In the presence of:

Mr Wakasyaka for the DPP

Applicants' Advocate, Mr. Abuya

Applicants, Both present

The Court Assistant (Jeniffer)

J. M. NANG'EA, JUDGE.

