



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL REVISION APPLICATION NO. E011 OF 2025
BONIFACE MUSYOKAAPPLICANT

-VERSUS-

REPUBLIC -----
RESPONDENT

RULING

1. The Applicant brings this Notice of Motion 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 Applicant swears an affidavit in support of the Motion jointly with others who are no longer involved in the Application. It is averred *inter alia* that the lower court convicted the Applicant and others 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. The Applicant herein complains 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 Applicant expresses remorse and urges the court to consider that he is a first offender and had co-operated with the investigators. He laments that the sentence meted out against him is excessive. The Applicant implies that the lower court 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 Applicant is not contending that the sentence meted out against him is illegal. Rather, he wants 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 Applicant seems to take the position that the same reasoning applies to minimum sentences prescribed for offences under the **Wildlife Conservation & Management Act** with which he has 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 Applicant 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 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. Perhaps the remaining avenue for redress available to the Applicant is revision of the sentence during the Judiciary's regular Prison Decongestion Programme.
11. In the premises, this Application is dismissed.

J. M. NANG'EA, JUDGE.

Ruling dated, signed and delivered at Nakuru this 20th day of November 2025 in the presence of:

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

Applicant, present

The Court Assistant (Jeniffer)

J. M. NANG'EA, JUDGE.

Original