

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT VIHIGA**  
**CRIMINAL MISCELLANEOUS APPLICATION NO E049 OF 2024**

**GEOFFREY ANAYA ALIAS KIBITO.....**  
**APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDEN**  
**T**

**SENTENCE**

**INTRODUCTION**

1. In its decision that was delivered on 30<sup>th</sup> April 2025, this court relied on the case of **Mbugua & 6 Others vs Attorney General & 3 Others (Constitutional Petition E002 & E003 of 2024 (Consolidated)) [2025] KEHC 1248 (KLR) (24 February 2025) (Judgment)** wherein this very court held that it was discriminatory to deny offenders who had been convicted of the offence of robbery with violence and attempted robbery with violence the right to have their mitigation during trial considered, while the non-capital offenders enjoyed that right.
2. It was in that regard that in its Ruling delivered on 26<sup>th</sup> May 2025 this court directed the Applicant herein to file his mitigation documents for consideration by this court.
3. The Applicant herein filed his documents in support of his mitigation together with his Written Submissions in respect of his Notice of Motion application dated 7<sup>th</sup> September 2023 on 13<sup>th</sup> March 2024. This Ruling is based on the said filed mitigating documents and parties' oral submissions which both parties relied on in their entirety.

## **LEGAL ANALYSIS**

4. In his mitigation, the Applicant submitted that he had learnt Theology, plumbing and how to make clothes. He said that if he went back to the society, he would use the gained expertise to do jobs. He admitted that what he did was wrong and that if given a second chance, he would live well with people. He promised never to repeat the mistake and sought for forgiveness from the victims. He averred that he was now reformed and expressed remorse for having committed the offence.
5. He stated that his wife left with his child. He prayed for a determinate sentence so that he could go back home to his family. He pointed out that he was currently serving a life sentence. He further stated that he was in custody for a year during trial and was never released on bond.
6. On its part, the Respondent submitted that although the Re-sentencing Report recommended re-sentencing, the Probation Office stated that the Applicant still denied committing the offence and was thus not remorseful.
7. It noted that he was charged with an offence of robbery, a second offence of gang rape and a third offence of resisting arrest. It added that in the second count, he was sentenced to ten (10) years and in the third count, to three (3) years, which sentences were held in abeyance due to the death sentence for robbery with violence.

8. It pointed out that during the incident, the Applicant committed the offence jointly with others and that they were armed with offence weapons, pangas, rungas, iron bars and torches. It urged this court to consider the weapons as aggravating factors and impose a sentence that was commensurate with the offence. It was its contention that the imposed sentence should be able to make the Applicant accountable for his actions.
9. It added that although the Re-sentencing Report had shown that the victim was not traced, it prayed that justice be done and be seen to have been done.
10. According to the Pre-sentence Report of Mariam Korir, Probation Officer, Vihiga dated 30<sup>th</sup> June 2025 and filed on 15<sup>th</sup> July 2025, the Applicant was aged forty (40) years and had spent twelve (12) years in prison. He attended Mazigulu Primary School and dropped out in Class Seven (7) due to poverty. Thereafter, he worked as a casual labourer around his home and made bricks to support his family. He was married and blessed with one (1) child.
11. Save for his low vision in one eye following an accident, he was of good health. He had, however, previously been treated for tuberculosis and ulcers while in prison. He had a history of drug abuse and alcoholism. He still denied having committed the offence attributing it to a mistaken identity.
12. His family was positive about him being re-sentenced so that he could go back home and take the position of his father. They

believed that he was a young man at the time of the offence and that he had changed his ways by now.

13. The victim could not be traced by the Probation office. The prison officers gave a good report about him. They pointed out that he had no criminal history in the prison. They added that he had trained in plumbing and tailoring and was a member of the Christian protestant group in prison.

14. The Local Administration and the community opined that since he had spent twelve (12) years in prison, he may have changed his ways and could be recommended for re-sentencing. The Probation Officer also opined that he was suitable for resentencing as the Local Administration and community were not opposed to him being resentenced and the fact that he had a family support system.

15. Notably, the principle of sentencing is fairness, justice, proportionality and commitment to public safety. The main objectives of sentencing are retribution, incapacitation, deterrence, rehabilitation and reparation. The Sentencing Policy Guidelines in Kenya have added community protection and denunciation as sentencing objectives. The objectives are not mutually exclusive and can overlap.

16. It was also important that the sentence communicate to the community, condemnation of his criminal act. The sentence would indirectly send a strong signal to deter would be offenders from committing such an offence. The sentence also had to be one that was hinged on retributive justice for the secondary victims.

17. If the court did not take into account the three (3) objectives of deterrence, retribution and denunciation of his offence at the time of sentencing him, chances of the Applicant being reintegrated in the society would be next to impossible as there were possibilities of being harmed. Justice not only needed to be done but it had to be seen to be done.
18. As can be seen hereinabove, one of the objectives of sentencing and/or incarceration was majorly to rehabilitate offenders. This court was persuaded to find and hold that the same had been achieved herein as the Applicant had undertaken life skills that would enable him be re-integrated back to the society.
19. From the facts of the case, on the material day of 18<sup>th</sup> day of February 2013 at Kavungwanyi Village in Vihiga County within Western Province jointly with others while armed with offensive weapons namely pangas, rungas, iron bars and bright torches, the Applicant robbed Norah Nyaboke Omundi mobile phone make Nokia, 6 Kgs Gas Cylinder of Total Gas, JUC CD Portable, 3 hand bags, 2 school bags containing books, purse and Kshs 6000/= all valued at Kshs 35,000/= and immediately before the time of such robbery used actual violence on the said Norah Nyaboke Omundi.
20. He was also convicted of the offence of gang rape and resisting arrested wherein he was sentenced to ten (10) years and three (3) years respectively.
21. As can be seen hereinabove, one of the objectives of sentencing and/or incarceration was majorly to rehabilitate

offenders. This court was persuaded to find and hold that the same had been achieved herein as the Applicant had undertaken life skills that would enable him be re-integrated back to the society. According to the Pre-Sentence Report, the community and the Local Administration had recommended for his re-sentencing.

22. Having considered the facts of this case, the Applicant's mitigation, the Prosecution's response thereto, the Pre-Sentence Report, the Recommendation Letter by Rev Patrick O. Olela (SP) Chaplain In charge on behalf of In charge Kisumu Maximum Prison and the Applicant's Certificates of completion on various rehabilitation programs, this court came to the firm conclusion that a reduction of his death sentence to a sentence of thirty- five (35) years imprisonment for the offence of robbery with violence would be reasonable in the circumstances of this case. This sentence took into account the aggravating circumstances of the gang rape.

23. As the Applicant's sentence was now determinate, this court was mandated to consider the period that he spent in remand while his trial was on going in line with Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya).

24. The said Section 333(2) of the Criminal Procedure Code provides that:-

**“Subject to the provisions of section 38 of the Penal Code (cap 63) every sentence shall be deemed to commence from, and to include the whole of the day of, the date on**

**which it was pronounced, except where otherwise provided in this Code**

**Provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody”**

(emphasis court).

25. Further, Clause 4.6.20 (ix) of the Judiciary Sentencing Policy Guidelines provides that:-

**“The Sentencing Court shall be guided by the sentencing principles and objectives set out in Part I of these the Guidelines in all resentencing hearings. The following mitigating factors were set out by the Supreme Court as particularly relevant in a resentencing hearing:...**

**(ix) Time already spent in prison by the convict...”**

26. The requirement under Section 333(2) of the Criminal Procedure Code was restated by the Court of Appeal in **Ahamad Abolfathi Mohammed & Another vs Republic [2018] eKLR.**

27. The Charge sheet indicated that the Applicant was arrested on 20<sup>th</sup> January 2013. He did not seem to have been given or released on bond. He was convicted and sentenced on 2<sup>nd</sup> December 2013. This was a time that ought to be taken into account while computing his sentence.

## **DISPOSITION**

28. Accordingly, the upshot of this court's decision was that although the Applicant's conviction remained undisturbed as it was safe, his sentence of death be and is hereby set aside and substituted with a sentence of thirty-five (35) years imprisonment which is to run from the date of the sentence of the lower court. The sentences of ten (10) years for the offence of gang rape will run concurrently with the sentence for the offence of robbery with violence while the sentence of three (3) years for the offence of resisting arrest will be consecutive of the sentences of the offences of robbery with violence and gang rape.

29. For the avoidance of doubt, the period between 20<sup>th</sup> January 2013 and 1<sup>st</sup> December 2013 that the Applicant spent in remand during trial be and is hereby taken into account pursuant to Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya).

30. It is so ordered.

**DATED** and **DELIVERED** at **VIHIGA** this **18<sup>th</sup>** day of **November**  
2025

**J. KAMAU**  
**JUDGE**