Ndeti alias Captain & 3 others v Republic (Criminal Revision E275 of 2023) [2025] KEHC 17479 (KLR) (27 November 2025) (Judgment)

Neutral citation: [2025] KEHC 17479 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MAKUENI

CRIMINAL REVISION E275 OF 2023

TM MATHEKA, J

NOVEMBER 27, 2025

BETWEEN

PATRICK NZIOKI NDETI ALIAS CAPTAIN ..... 1ST APPLICANT

PATRICK MWENDWA MUSILI ALIAS MATO & 2 OTHERS & 2 OTHERS ..... 2ND APPLICANT

AND

THE REPUBLIC ..... RESPONDENT

JUDGMENT

1. The application for determination is dated 20092023 and was filed under certificate of urgency. It is brought under sections 333,362 and 364 of the Criminal Procedure Code and seeks the following orders;

    a. Spent.

    b. spent

    c. That this honorable court do exercise its discretion in revising the thirty years sentence meted upon the Applicants on 3rd December 2018 to which they have dutifully and obediently served 5 years and 5 months.

    d. That the honorable court do issue and further andor other order necessary in the circumstances.

2. The application is supported by the grounds on its face and the Affidavit of Rebecca Kiprono sworn on the same date. She deponed that she is an advocate of the High Court of Kenya in conduct of this matter hence competent to swear the affidavit. That on 17052018, the Applicants were charged with the offence of robbery with violence, as the 1st to 4th accused respectively, at Makueni Law Courts as per the copy of charge sheet exhibited as PPPJ-1.

3. She deponed that the Applicants were convicted and sentenced to thirty years imprisonment on 03122018 and the sentence was to start running from 30042018 as per the copy of judgment exhibited as PPPJ-2. That, the Applicants appealed to the High Court at Makueni vide Criminal Appeal No. 72 of 2018 in which the decision of the trial court was upheld as per the copy judgment exhibited as PPPJ-3. That, the Applicants proceeded to the Court of Appeal in Nairobi vide Appeal No. 88 of 2020 in which the decision of the High Court was upheld as per the copy of judgment exhibited as PPPJ-4. That, the Applicants have dutifully and diligently served five years and 5 months of their sentence.

4. She deponed that at the time of sentencing, the Applicants were at a productive age to wit; 1st applicant; 46 years, 2nd applicant: 52 years; 3rd applicant: 43 years: 4th applicant 41 years and that they have undergone various rehabilitative programs from various institutions and projects to which they have been awarded various certificates. Copies of the certificates are exhibited as PPPJ-5.

5. She deponed that the 3rd applicant was diagnosed with asthma, diabetis, blood pressure and peptic ulcer disease while the 4th applicant was diagnosed with asthma and peptic ulcer disease which conditions are delicate, care-intensive and financially draining. Copies of medical report are exhibited as PPPJ-6 & 7 respectively.

6. She deponed that the prison conditions are such that the 3rd and 4th Applicants cannot access quality healthcare services as a result of which their health continues to decline at an alarming rate. That their right to life is under threat hence the prayer that this court revises the sentence of 30 years and substitutes it with a lenient punitive fine or a lenient non-custodial sentence. That, having dutifully and obediently served 5 years and 5 months of their sentence in addition to the training and rehabilitation programs, it is prudent that the 30 -years sentence be revised. That, it is prudent for this court to find that the Applicants are energetic and still productive since they have undergone the rehabilitation programs and trainings in various projects. That, they will positively influence their fellow young men and bring growth to the economy as well as be beneficial to themselves.

7. She deponed that the Applicants have undertaken various trainings in theology and acquired various recommendations from prison authorities. That, they are now reformed and have been model inmates and have actively pursued education to enlighten their minds and spiritual connection with God thus warranting consideration by this court.

8. She deponed that the Applicants are remorseful for their actions and have reformed during their period of incarceration. Copies of recommendation letters are exhibited as PPPJ-8.

9. The State opposed the application through grounds of opposition dated 20112023 to wit;

    a. That the application is defective, misconceived and bad in law.

    b. That the Applicants have not sworn affidavits in support of the application on factual issues hence the application is fatally defective.

    c. That the application is misconceived on the provisions of section 362 and 364 of the criminal procedure code.

    d. That this court lacks jurisdiction to hear this application.

    e. That the sentence meted on the Applicants was lawful and has been confirmed by the High Court and Court of Appeal.

    f. That the application lacks merit and should be dismissed.

10. The application was canvassed through written submissions. There are no submissions by the State on record.

Submissions by the 1st Applicant

11. The 1st applicant, Patrick Nzioki Ndeti, filed his submissions in person. He submitted that, deep down in his heart, he is aggrieved by what happened and has learnt the hard way. That, he regrets his action which led to a lot of pain to the two families involved. That, although he ought to pay for what ensued, time is a healer and he has paid his price. That, he is very sorry for the shame he brought to his family and social circle. That, he always lives to curse the wishes of his evil heart which he failed to control and which he regrets to date. That, he is a first offender and has no record of deviance prior to this offence.

12. He submitted that although the ordeal was unwarranted, there was no loss of life. That, he was arrested at the age of 42 years and has been in prison for 6 years. That, he is married with 2 children and prays for a second chance to be with his family.

13. He submitted that the 2022 Economic survey released by the Kenya National Bureau of Statistics shows that the average Kenyan woman lives to 60.6 years and that Psalms 90 in the Bible puts life expectancy at 70 years. That, if he serves the term of 30 years, it means that he will leave prison at age 72 which is above the life expectancy.

14. He submitted that during his stay in prison, he used his time constructively and acquired skills for personal development. That, he reflected on what he had done and has reformed. That, he would like to use the knowledge and skills acquired to advise, encourage, inspire and motivate many youths.

15. The 1st applicant relied on the following cases;

    a. Republic -vs-Jagani & Anor [2001] KLR 590 where the court stated; "the purpose of sentence is usually to disapprove or denounce unlawful conduct as a deterrent to deter the offender from committing the offence to separate offenders from society if necessary to assist in rehabilitation by providing for reparation for harm done to victims in particular to and to society in general. This is also seen as promoting a source of responsibility in offenders.

    b. Douglas Muthaura Ntoribi -vs- Republic: Meru High Court Misc Application No. 4 of 2015: the court substituted a death sentence with 15 years for the offence of Robbery with violence upon considering that the robbers had stolen a paltry kshs 500= and the victim had sustained only minor injuries.

    c. Michael Kathewa Laichena -vs- Republic [2018] eKLR: the petitioner was in a gang that was armed with a gun and knives and was re-sentenced to 15 years after considering that he had been in custody for 5 years pending trial.

    d. Benjamin Kimboi Kipkone -vs-Republic [2018] eKLR: 3 robbers armed with AK 47 riffle robbed the complainant of kshs 250,000= and a mobile phone. The death sentence was substituted with 20 years imprisonment.

    e. Wycliffe Wangugi Mafura -vs- Republic, Eldoret Criminal Appeal No. 22 of 2016: the Court of Appeal imposed a sentence of 20 years where the appellant was involved in robbing an mPESA shop agent using a firearm.

    f. Morris Andabo Mukanda -vs- Republic, Petition No. 35 of 2019: the petitioner and members of his gang robbed the complainant of a motor cycle and seriously injured the complainant's colleague. The appellant was re-sentenced to 15 years from the date of lower court sentence.

16. The 1st applicant submitted that in 2016, a three-judge bench of Jessie Lessit, Stella Mutuku and Luka Kimaru, in the case of Kaberia Kahinga & 2 Others, found that five sections of the Penal Code with regard to robbery with violence and attempted robbery were unconstitutional. That, since March 2018, the two offences have ceased to be offences in Kenya hence there is a violation of fundamental rights and freedoms of the Applicants.

Submissions by the 2nd Applicant.

17. The 2nd applicant, Patrick Mwendwa Musili, filed his submissions in person. He submitted that; he is greatly remorseful for the unfortunate incident that took place. That, he has been in lawful custody for the last 6 years and has been able to appreciate the consequences of his actions and vows never to repeat such wayward conduct again. That, during his time in custody, he has learnt useful life skills and has also undergone spiritual and self-nourishment through courses as duly shown by the certificates attached to the application.

18. He submitted that he is 47 years with a family of 7 dependents and is now alive to the fact that crime does not pay. He promises to maintain the spirit enshrined in the Sentencing Policy Guidelines of 2015, direction 4, that 'the core objective of a custodial sentence is possibility of reform and the re-adaptation of the offender'. Reliance was placed on the case of Antony Mwema Mutisya -vs- R; Misc Application No. 60 of 2017 where the court (Odunga J) stated;

> " 10. That the possibility of reform and social re-adaptation of the offender is to be considered in sentence re-hearing, in my view implies that where the accused has been in custody for a considerable period of time the Court ought to consider calling for a pre-sentencing report and possibly the victim impact report in order to inform itself as to whether the accused is fit for release back to the society. In my view, fairness to the accused where a sentence re-hearing is considered appropriate would require a consideration of the circumstances prior to the commission of the offence, at the time of the trial and subsequent to conviction. The conduct of the accused during the three stages may therefore be a factor to be considered in determining the appropriate sentence.
>
> The need to protect the society clearly requires the Court to consider the impact of the incarceration of the offender whether beneficial to him and the society or not hence the necessity for considering a pre-sentencing report.
>
> 12. In my view where the accused has spent a considerable period of time in custody, it may be prudent for the Court while conducting a sentence re-hearing, to direct that an inquiry be conducted by the probation officer and where necessary a pre-sentencing and victim impact statements be filed in order to enable it determine whether the accused has sufficiently reformed or has been adequately rehabilitated. This is so because the circumstances of the accused in custody may have changed either in his favour or otherwise in order to enable the Court to determine which sentence ought to be meted. It may be that the accused had sufficiently reformed to be released back to the society. It may well be that the conduct of the accused while in custody may have deteriorated to the extent that it would not be in the interest of the society to have him released since one of the objectives of sentencing is to protect the community by incapacitating the offender."

19. Relying on section 4(2) of *Probation of Offenders Act*, Cap 64 Laws of Kenya and section 8(2) of the *Community Service Orders Act*, the 2nd applicant submitted that this court has jurisdiction to permit conditional release of offenders. The applicant urged this court to give orders for preparation of the said reports in a bid to satisfy itself on the merit of the applicant's re-adaptation to the society.

20. He submitted that it is not in doubt that offenders ought to be punished but contended that under Article 29 of *the Constitution*, every person has the right to freedom and security of the person which includes the right not to be punished in a cruel, inhuman or degrading manner. Reliance was placed on the case of S -vs- Scott Crossley (2008) (1) SACR 223(SCA) where the court stated;

> " Plainly, any sentence imposed must have a deterred and retributive force. But of course, one must not sacrifice an accused person on the altar of deterrence ...it is true that it is in the interest of justice that crimes must be punished. However, the punishment that is excessive serves neither the interest of justice nor those of society."

21. He submitted that his positive conduct and remorsefulness shows that if he is given another chance, he is going to positively engage others in the society and be a role model for change as an ambassador of the rule of law bearing in mind that there is no straight jacket formulae for reformation.

Submissions by the 3rd & 4th Applicants.

22. Submissions on their behalf were filed by the firm of R. Kiprono & Co. Advocates. The issues for determination were identified to be;

    a. Whether the Applicants are entitled to a further remission to warrant a lenient punitive fine or a lenient non-custodial sentence, or an unconditional release from prison;

    b. Whether the High court has jurisdiction to hear this Application

23. On whether the Applicants are entitled to further remission, reliance was placed on Francis Karioko Muruatetu & Anor -vs- Republic (2017) for the submission that the Supreme Court agreed with the Petitioners that the purpose of remission is to act as an incentive to the prisoner and encourage good behaviour, rehabilitation and self-improvement if a prisoner knows that his or her conduct directly affects his or her jail term thus placing his or her destiny in his or her own hands. That, the court referred to Article 10 of the International Covenant on Civil and Political Rights (ICCPR) which stipulates that: "...the penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation."

24. It was submitted that the 3rd and 4th Applicants have demonstrated good behaviour as evidenced by their recommendation letters and have participated in various christian and academic exercises towards their reform and rehabilitation. Reliance was placed on section 46(5) of the Prisoners, Act, Cap 90 which provides that, "...Notwithstanding the provisions of subsection (1) of this section, the Commissioner may grant a further remission on the grounds of exceptional merit, permanent ill-health or other special rounds."

25. As to whether the Applicants are entitled to a further remission on the grounds of exceptional merit, permanent ill-health or other special grounds, it was submitted that the two Applicants have been diagnosed with various permanent illnesses as per the medical reports in the supporting affidavit. That, considering their nature of recurrence and severity in light of the deplorable prison conditions, it is imperative that this honourable court grants a further remission.

26. As to whether this court has jurisdiction to hear this application, it was submitted that this court is charged with the fundamental duty to observe, respect, protect, promote and fulfill the rights and fundamental freedoms in the Bill of rights as enshrined under Article 21(1) of *the constitution* of Kenya, 2010. That, the High court has jurisdiction to hear and determine Applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of rights in terms of Article 23(1) of *the constitution* of Kenya.

27. Reference was made to Article 50 of *the Constitution* of Kenya for the submission that, upon conviction, an accused person is entitled to benefit from the least severe sentence, and this case, is the one to which remission has been applied.

28. It was submitted that whereas the grant of remission and grant of further remission based on the provisions of section 46(5) of the Prisoners, Act, Cap 90 falls within the remit of the Commissioner-General of Prisons, the Commissioner is under the supervisory jurisdiction of this court under Article 165(6) of *the Constitution*. Consequently, it was submitted that, this court has the power to interrogate any decision of the Commissioner under Article 47 of *the Constitution* and *Fair Administrative Action Act*, 2015.

29. It was submitted that PART VII of the Prisons Rules, 1963 details period and remission of sentence including release under supervision. That, it explains calculation of remission, requirement to explain remission system to prisoners, keeping of records and computation of sentence, for purposes of remission where capital sentence has been commuted to a sentence of imprisonment. That, the rules further outline circumstances where remission may be forfeited.

30. Having looked at the application, grounds of opposition and submissions by the Applicants; it is my considered view that the following issues arise for determination;

    a. Whether this court has jurisdiction to hear the application;

    b. Whether by virtue of s. 45 of the *Prisons Act* the Commissioner of Prisons is subject to the Supervisory Jurisdiction of this Court under Article 165(6) of *the Constitution*

    c. Whether this court should interfere with the 30-years sentence which was confirmed by the High Court and Court of Appeal.

Analysis & Determination

Whether this court has jurisdiction to hear the application

31. I have carefully considered the application and the submissions before me. The application is brought under Article 165(3) (6) of *the Constitution* s. 46(5) of the Prison's Act , sections 333(2) ,362 and 364 of the CPC which state

32. The application before court is basically for sentence re-hearing a concept was introduced by the Supreme Court in Muruatetu 1 in 2017 . The appellants were convicted of murder and sentenced to death. They were challenging the legality of the mandatory nature of the death sentence imposed by the High Court and affirmed by the Court of Appeal. They also challenged the indeterminate nature of a life sentence and asked whether the court ought to assign a definite number of years of imprisonment, subject to remission rules, which would constitute life imprisonment. The Supreme Court inter alia ordered the Attorney General, the Director of Public Prosecutions (DPP) and other relevant agencies to prepare a detailed professional review in the context of the judgment with a view to setting up a framework to deal with sentence re-hearing of cases similar to that of the petitioners herein.

33. The application has also invoked the revisionary jurisdiction of the court under The Criminal Procedure Court and Article 165(6) of *the Constitution*. This was discussed in Joseph Nduvi Mbuvi - vs- Republic [2019] eKLR as follows;

> "In my considered view, the object of the revisional jurisdiction of the High Court is to enable the high Court, in appropriate cases, whether during the pendency of the proceedings in THE Subordinate Court or at the conclusion of the proceedings to correct manifest irregularities or illegalities and give appropriate directions on the manner in which the trial, if still ongoing, should be proceeded with. In other words, the High Court's revisionary jurisdiction includes ensuring that where the proceeding in the Lower Court has been legally derailed, necessary directions are given to bring the same back on track so that the trial proceeds towards its intended destination without hitches. Not only is the jurisdiction exercisable where the Subordinate Court has made a finding, sentence or order but goes on to state that it is also exercisable to determine the regularity of any proceedings of any such Subordinate Court as well." (emphasis mine)

34. As is evident from that discussion the Revisionary Jurisdiction of this court is over the subordinate court or the lower court.

35. Jurisdiction is everything and without is the court cannot take a step. The court can also NOT assign itself jurisdiction. Article 165 *The Constitution* clearly states inter alia :

> 165 (3) Subject to clause (5), the High Court shall have—
>
> a. unlimited original jurisdiction in criminal and civil matters;
>
> b. jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened;
>
> c. ...
>
> (d) ....
>
> (e) any other jurisdiction, original or appellate, conferred on it by legislation. (4)....
>
> (5 .....
>
> (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.
>
> S. 362. Power of High Court to call for records of the Criminal Procedure Code Provides for the same
>
> 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.

36. The sentence the applicants have placed before me has been upheld by two superior courts . The High Court Kariuki J, and the Court of Appeal. This court has no jurisdiction to revise those.

37. The applicants rely on Article 50 (2) which provides inter alia that every accused person has the right to a fair trial, which includes the right

p. to the benefit of the least severe of the prescribed punishments for an offence, if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing; and

q. if convicted, to appeal to, or apply for review by, a higher court as prescribed by law

38. These rights accrue at the point of conviction at the trial court. The right to review is to a higher court. In this case the review would have been to the Supreme Court because they have already been to the other superior courts.

39. In Shaban Salim Ramadhan & others -vs- Republic Mombasa HC Constitutional Petition No 5 of 2022, the mandatory sentence of death for robbery with violence and attempted robbery with violence was declared unconstitutional. There are several other cases determined by superior courts on the unconstitutionality of the death sentence and life imprisonment in capital and sexual offences.

40. In Muruatetu & Anor -vs- Republic: Katiba Institute & 4 Others (Amicus Curiae) (Petition 15 & 16 of 2015) [2021] KESC 31 (KLR) (6 July 2021) (Directions), popularly known as 'Muruatetu 2', the Supreme Court gave directions as follows;

> " To clear the confusion that exists with regard to the mandatory death sentence in offences other than murder, we direct in respect of other capital offences such as treason under section 40 (3), robbery with violence under section 296 (2), and attempted robbery with violence under section 297

(2) of the Penal Code, that a challenge on the constitutional validity of the mandatory death penalty in such cases should be properly filed, presented, and fully argued before the High Court and escalated to the Court of Appeal, if necessary, at which a similar outcome as that in this case may be reached. Muruatetu as it now stands cannot directly be applicable to those cases."

41. Consequently, the emergent jurisprudence the High Court could do a sentence re-hearing in cases where accused persons had been sentenced to death before Francis Karioko Muruatetu & another -vs- Republic [2017] eKLR (Muruatetu 1) when trial courts were impeded by the mandatory nature of sentence under Section 296 (2) of the Penal Code which prescribed death sentence as the only punishment.

42. That is not the situation obtaining for the Applicants herein as they were sentenced on 03122018 approximately one year after Muruatetu 1 which was decided on 14122017. Certainly therefore, they were beneficiaries of the discretion which trial courts enjoyed at that time before a clarification was made by the Supreme Court in Muruatetu 2.

43. From the trial court record, it is evident that the Applicants were given an opportunity to mitigate and that the trial court exercised discretion when it stated;

> " I do take into account the mitigation by the accused persons. I do take into account the period of time the accused have been in custody from 30418. I do take into account the increasing numbers of robberies in this country. I do take into account the manner in which the robbery was executed. I do take into account the sentence by law imposed which carries, though not compulsory, a death sentence." (emphasis mine)

44. In confirming the 30-year sentence meted on the Applicants, this court (Kariuki J) stated;

> "As for the sentence, it is on record that the appellants have similar cases in different courts within the country. The appellants inflicted serious injuries on the complainant and it was the doctor's evidence that the injury on the right eye could lead to blindness. Throwing someone out of a moving vehicle is the height of cruelty. There are aggravating circumstances in this case which makes the sentence of 30 years look like child's play."

45. The conclusion is that this court lacks jurisdiction and cannot interfere with the 30-years sentence which it confirmed and was subsequently upheld by the Court of Appeal.

46. On the question of Remissions, it was submitted that this court has the power to interrogate any decision of the Commissioner under Article 47 of *the Constitution* and *Fair Administrative Action Act*, 2015.

47. section 46 of the *Prisons Act* provides as follows;

1. Convicted criminal prisoners sentenced to imprisonment, whether by one sentence or consecutive sentences, for a period exceeding one month, may by industry and good conduct earn a remission of one-third of their sentence or sentences.

   Provided that in no case shall;

   (i) any remission granted result in the release of a prisoner until he has served one calendar month; (ii)any remission be granted to a prisoner sentenced to imprisonment for life or for an offence under section 296(1) of the Penal Code (Cap. 63) or to be detained during the President''s pleasure.

2. For the purpose of giving effect to the provisions of subsection (1), each prisoner on admission shall be credited with the full amount for remission to which he would be entitled at the end of his sentence if he lost no remission of sentence.

3. A prisoner may lose remission as a result of its forfeiture for an offence against prison discipline, and shall not earn any remission in respect of any period;

   a. spent in hospital through his own fault; or

   b. while undergoing confinement as a punishment in a separate cell. (4)A prisoner may be deprived of remission;

      a. where the Commissioner considers that it is in the interests of the reformation and rehabilitation of the prisoner;

      b. where the Cabinet Secretary for the time being responsible for internal security considers that it is in the interests of public security or public order.

   (5) Notwithstanding the provisions of subsection (1) of this section, the Commissioner may grant a further remission on the grounds of exceptional merit, permanent ill-health or other special ground.

48. The concern of the Applicants is with the further remission provided for in sub-section 5 of section 46 (supra) and their submission is that this court has supervisory jurisdiction on the Commissioner with regard to his her power to grant further remission on grounds of exceptional merit, permanent ill-health or other special ground.

49. The supervisory jurisdiction of the High Court under Article 165(6) of *the Constitution* is; 'over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.' The question therefore is whether the power of the Commissioner under sub-section 5 is quasi-judicial in nature.

50. According to the Black''s Law Dictionary 1278–79 (8th ed.2004), 'quasi-judicial' is defined as 'of, relating to, or involving an executive or administrative official's adjudicative act while 'quasi-judicial act' is 'A judicial act performed by an official who is not a judge'.

51. According to the U.S case of Field -vs- Kearns, 43 Connecticut Appellate Court. 265, 682 A.2d 148 (1996), a proceeding is quasi-judicial when the agency has the power to exercise judgment and discretion, hear and determine or ascertain facts, make binding orders and judgments affecting personal or property rights, examine witnesses and enforce decisions or impose penalties.

52. The Commissioner's power under section 46(5) is not quasi-judicial as it does not involve ascertainment of facts, examination of witnesses and all the other processes that would mimic a trial. It appears to me that it is purely administrative and would not fall under the category of those under article 165(6) of *the Constitution*.

53. Whether or not the applicants are entitled to further remission is within the purview of the Commissioner and unless there is evidence of violation of the provisions of the law that empower the Commissioner thus, then this court cannot just jump in. The applicants have not demonstrated any violation that would call this court to act. No issue has been raised under the Fair Administrative Actions Act for determination by this court.

54. The applicants are not without recourse. *The Constitution* recognizes that a convict ought to have reprieve outside the court system. A person convicted of an offence can petition the President to exercise his power of mercy in their favour. Article 133 (1) of *the Constitution* provides that;

> " On the petition of any person, the President may exercise a power of mercy in accordance with the advice of the Advisory Committee established under clause (2) by;
>
> a. Granting a free or conditional pardon to a person convicted of an offence.
>
> b. Postponing the carrying out of a punishment, either for a specified or indefinite period.
>
> c. Substituting a less severe form of punishment.
>
> d. Remitting all or part of a punishment."

55. Under the *Power of Mercy Act* section 19 provides for the eligibility of a petitioner

> 1. Any person may, subject to *the Constitution* and this Act, petition the President, through the Committee, to exercise the power of mercy and grant any relief specified in Article 133(1) of *the Constitution*.
>
> 2. Notwithstanding the generality of subsection (1), a petition shall not be permitted where— (a)the person for whose benefit it is made, is on probation or serving a suspended sentence; or (b)an application for any judicial remedy is pending before a court.

56. Other helpful provisions include of the *Power of Mercy Act* include;

57. Criteria to be applied by the Committee

(1) The Committee shall, in making a recommendation under Article 133 of *the Constitution* and section 21(1)(c) consider—

(a) the age of the convicted criminal prisoner at the time of the commission of the offence;

(b) the circumstances surrounding the commission of the offence;

(c) whether the person, for whose benefit the petition is made, is a first offender;

(d) the nature and seriousness of the offence;

(e) the length of period so far served by the convicted criminal prisoner;

(f) the length of period served by the convicted criminal prisoner in remand;

(g) the personal circumstances of the offender at the time of making the petition, including mental and physical health and any disabilities;

(h) the interest of the State and community;

(i) the post-conviction conduct, character and reputation of the convicted criminal prisoner;

(j) the official recommendations and reports from the State organ or department responsible for correctional services;

(k) where the petitioner has opted to pursue other available remedies, the outcome of such avenue; and

(l) the representation of the victim where applicable.

(2) In addition to the requirements under subsection

(1), the Committee may consider—

(a) where applicable, a report of fellow inmates; or

(b) reports from probation services.

58. Notification of grant or denial of petition

(1) The President shall, within sixty days of receipt of the recommendations by the Committee, consider the recommendations and either approve or reject the petition.

59. The applicants are at liberty to pursue their freedom through this Constitutional institution.

60. Ultimately, I find that the application cannot stand for want of jurisdiction. The same is declined.

Orders accordingly.

DATED, SIGNED AND DELIVERED THIS 27TH NOVEMBER 2025 MUMBUA T MATHEKA

JUDGE

CA CHRISPOL

APPLICANTS ALL PRESENT VIRTUALLY AT MACHAKOS AND NANYUKI PRISONS MR. KAZUNGU FOR STATE

Signed Byfor:

Lady Justice Matheka, Teresia Mumbua

The Judiciary Of Kenya.

Makueni High Court

High Court Div

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