

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
MISC APPLICATION NO. E141 OF 2025

ABIGAEL CHEROTICH YEGO
APPLICANT

VERSUS

REPUBLIC RESPONDENT

IN THE MATTER OF: ARTICLE 50(2)(P), 165(3)(A), 159(2)(D) OF THE CONSTITUTION OF KENYA 2010, SECTION 333(2) OF THE CRIMINAL PROCEDURE CODE, SECTION 3A OF THE CIVIL PROCEDURE ACT AND SECTION 3, 4, 5, 14, 15 & 18 OF THE PROBATION OF OFFENDERS ACT CAP 64 LAWS OF KENYA

Coram: Before Justice R. Nyakundi
M/s Sidi Kirenge for the State

RULING

1. Before the Court is a notice of Motion for determination where the Applicant is seeking for the following orders:
 - (a) That this honorable court be pleased to review the sentence imposed upon the Applicant on 19th August 2024 in HCCRC No. 39 of 2019 by Hon. Justice Nyakundi.
 - (b) That the honourable court be pleased to take into account the entire period spent by the Applicant in pre-trial remand custody in compliance with section 333(2) of the Criminal Procedure Code.
 - (c) That this honourable Court be pleased in the interest of justice to commute the remainder of the Applicant's custodial sentence into a probation sentence under Cap 64.
 - (d) That the Court makes any other order it deems fit and just in the circumstances.
2. The application is grounded on the following grounds:
 - (a) The Applicant was charged with the offence of order contrary to Section 203 as read with Section 204 of the Penal Code. Upon

mitigation the learned trial Judge convicted and sentenced her to four (4) years imprisonment.

- (b) The Applicant was arrested on 19th August 2018 and remained in remand custody until release on bond on 17th June 2019. The bond was later cancelled on 9th August 2024 and conviction delivered on 19th August 2024. Cumulatively the Applicant has already spent over three (3) years in remand custody, which was not factored in the final sentence as required under Section 333(2) of the Criminal Procedure Cod.
 - (c) The Applicant is a first offender who has since undergone reconciliation and restorative justice with the deceased's family, particularly the deceased's father-in-law thereby fulfilling the principles of restorative justice under Article 159(2)(c) of the Constitution.
 - (d) The Applicant is the mother of a minor child currently in custody at Eldoret Woman's prison who suffers from asthma and chronic chest complication aggravated by prison conditions, necessitating urgent medical and environmental relief.
 - (e) The Applicant expresses deep remorse, repentance and lesson learned from the trial and incarceration and prays for reintegration into society through probation supervision under Section 4, 5 and 14 of the Probation of Offenders Act Cap 64 which provides for non-custodial sentences for suitable offenders.
3. The application is supported by an affidavit sworn by the Applicant who depones as follows:
- (a) That I was charged with murder under Section 203 as read with 204 of the Penal Code convicted and sentenced to 4 years by Hon. Justice Nyakundi on 19/08/2024.
 - (b) That I was arrested on 17/06/2019 later released on bond on 13/1/2023 the bond was cancelled on 9/08/2024 and I was convicted on 19/08/2024. I have cumulatively spent more than 3 years in remand custody not credited on my sentence.

- (c) That I am a first offender, remorseful and reconciled with the deceased's family particularly my father-in-law who has forgiven me.
- (d) That I have a minor child with me at Eldoret Women's Prison suffering from asthma and chronic chest conditions worsened by the prison environment.
- (e) That I humbly pray for mercy and for the remainder of my sentence to be commuted in a probation order under Cap 64 to enable me care of my sick child and reintegrate with back into society under supervision.
- (f) That this application is made in good faith and in the best interest of justice.

Decision

4. This is the 3rd time the Applicant is moving the court on review of sentence including the application of Section 333(2) of the Criminal Procedure Code on pre-detention credit period. During the primary period after taking evidence, analyzing it and rendering a decision on the findings of guilty and conviction as against the offence in question there is no doubt in my mind that all factors were taken into account. The sentencing verdict arrived at by this Court considered aggravating and mitigating factors including taking into account the pre-detention period. I know what the Applicant is anxious about. She is looking for the word pre-detention period or the period spent in remand custody to pin the Court down to revisit the issue. My answer to the Applicant is there is no error or mistake of fact or law in so far as the sentence imposed is concerned and the interpretation of Section 333(2) of the Criminal Procedure Code. The broader goal is to find out whether the approaches to sentencing purposes taken by the legislative scheme and the Judiciary as arm of the government are aligned with the spirit and the letter of the law on the prescribed sentence for that offence. My answer to the question is that the single most important purpose is

what will be achieved by the sentence imposed individualized to that specific case. I have the mind the following:

- (a) To make sure the offender gets the punishment they deserve.
- (b) To teach the offender a lesson so they won't do it again.
- (c) To discourage other people from offending by making an example of the offender.
- (d) To rehabilitate the offender so that they do not offend again.
- (e) To protect the community by keeping the offender off the streets.
- (f) To compensate the victim and/or the community.
- (g) To express the community's disapproval of the offender's behavior.

5. This application by the Applicant is *res judicata* importing the doctrine from the realm of civil law. She is therefore estopped from pursuing this remedy on review of sentence once again. It remains dismissed under Section 382 of the Criminal Procedure Code.

**DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 25TH DAY OF
NOVEMBER, 2025**

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**R. NYAKUNDI
JUDGE**