



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA COUNTY

COURT NAME: MOMBASA HIGH COURT

CASE NUMBER: HCCRMISCAPPL/E088/2024

MATHEW MUMINA MUTINDA VS THE REPUBLIC

RULING

(Revision of sentence emanating from Mombasa High Court Criminal Misc Application number E225 of 2022)

The homemade Notice of Motion dated 13th May 2024 prepared by Mathew Mumina Mutinda seeks to move the court for a review of his sentence and be placed to a non-custodial sentence. The Application is brought under Section 354 of the Criminal Procedure Code and Section 4 (1) and (2) of the probation and Offenders Act.

The Applicant was charged with the offence of murder contrary to section 203 as read with Section 204 of the Penal Code. On 29th October 2012, he was convicted and sentenced to 40 years in prison by Lady Justice Odero. Being aggrieved with the said judgement he filed an appeal to the Court of Appeal. His appeal on conviction was dismissed but his sentence was reviewed and reduced to 25 years' imprisonment to take effect from the date of conviction.

The Applicant further filed High Court Misc application number E225 of 2022 seeking review under Section 333 (2) of the Criminal Procedure Code. On 22nd May 2023 the High Court directed that the sentence of 25 years to commence from 30th April 2009.

I have considered the application filed, the affidavit in support and the submissions filed by the state. I have also considered the sentence review report dated 21st October 2025 filed by the Principal Probation Officer. The issue for consideration is whether the application has merit and what orders this court should make.

Section 4 of the Probation of Offenders Act states that: -



“4. Power of court to permit conditional release of offenders.

(1) Where a person is charged with an offence which is triable by a subordinate court, and the court thinks that the charge is proved but is of the opinion that, having regard to age, character, antecedents, home surroundings, health or mental condition of the offender, or to the nature of the offence, or to any extenuating circumstances in which the offence was committed, it is expedient to release the offender on probation, the court may—

(a) convict the offender and make a probation order; or

(b) without proceeding to conviction, make a probation order, and in either case may require the offender to enter into a recognizance, with or without sureties, in such sum as the court may deem fit.

(2) Where any person is convicted of an offence by the High Court and the court is of the opinion that, having regard to the age, character, antecedents, home surroundings health or mental condition of the offender, or to the nature of the offence, or to any extenuating circumstances in which the offence was committed, it is expedient to release the offender on probation, the court may, in lieu of sentencing him to any punishment, make a probation order, and may require the offender to enter into a recognizance, with or without sureties, in such sum as the court may deem fit.”

In **Kimutai vs Republic (2024) KEHC 6871 (KLR)** the court listed the considerations to appreciate when determining a custodial and non-custodial sentencing as follows:

In determining whether to impose a custodial or non-custodial sentence, the Court is required to take into account the following factors: -

- 1. Gravity of the offence – sentence of imprisonment should be avoided for misdemeanor.**
- 2. Criminal history of the offender - taking into account the seriousness of the offences, first offenders should be considered for non-custodial sentence.**
- 3. Character of the offender – non-custodial sentence is best suited for offenders who are already remorseful and receptive to rehabilitative measures.**
- 4. Protection of the community – where the offender is likely to pose a threat to the community.**
- 5. Offender’s responsibility to third parties – where there are people depending on the offender.**

Further, in the case of **Republic vs Felix Madalitso Keke Confirmation Appeal no. 404 of 2010 (unreported)** where the court held as follows: -

“Considerations of the public interest when sentencing offenders must go beyond considerations of deterrence; there is always the consideration that the public whose interest the sentence wants to serve includes the prisoner before the court at first instance. It is in public interest that sentences are passed which are not cruel, degrading and inhuman. Harsh or lenient sentences may not necessarily serve the public interest; they are likely to have an opposite effect. While sentences must fit the crime, the offender and the victim, they must also fit and cohere with overall sentencing goals, justice,



reformation, restoration and rehabilitation. Our sentences may not be in the public interest if they only succeed in instilling crime and fail in bringing the prisoner a better person in the society”’s continuum.”

From the onset the offence herein is not a misdemeanor. The Applicant was charged, convicted and sentenced to 25 years' imprisonment for the offence of murder contrary to section 203 as read with Section 204 of the Penal Code.

He has religiously served his sentence and has less than 3 years left in custody. The Sentence review report shows that the applicant is remorseful and receptive to rehabilitative measures. The community is positive and ready to have him back hence re-integration is not a challenge. The applicant is a family man and they are also ready to help and guide him after his early release. The applicant enrolled and excelled in tailoring hence the experience will help him with his day to day life.

The high Court will not review the sentence of an equal judge. However he can be considered for the decongestion slated for later in the year.

DELIVERED, DATED and SIGNED at MOMBASA on this 27th day of NOVEMBER 2025.

Ruling delivered through Microsoft Teams Online Platform.

WENDY KAGENDO MICHENI

JUDGE

In the presence of:-

THE ACCUSED PERSONS

FOR THE PROSECUTOR MR SIRIMA

COURT ASSISTANT BEBORA

SIGNED BY/FOR:
HON. LADY JUSTICE WENDY MICHENI



THE JUDICIARY OF KENYA.
MOMBASA HIGH COURT
HIGH COURT CRIMINAL
DATE: 2025-11-27 17:17:49

