

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT VIHIGA**

**CRIMINAL MISCELLANEOUS APPLICATION NO E001 OF 2024**

**GILBERT KIPKOECH LANGAT.....APPLICANT**

**VERSUS**

**REPUBLIC.....  
RESPONDENT**

**SENTENCING**

**INTRODUCTION**

1. In its decision that was delivered on 26<sup>th</sup> February 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 this court directed the Appellant herein to file his mitigation documents for consideration by this court. However, he informed this court that he was an amputee following the robbery incident and had not acquired any Certificates. He, however, submitted a Recommendation letter from the Officer-In-Charge Kibos Maximum Prison.
3. In his oral mitigation to this court, he informed this court that he was arrested at the age of eighteen (18) years and he did not

understand what he was doing at the time. He said that he was now thirty-eight (38) years having been in prison for a period of twenty (20) years and had learnt his lesson. He expressed remorse for having committed the offence.

4. He averred that he had learnt shoe shining skills and how to save money which could help him keep chicken. He prayed for a chance to be reintegrated with the society. He also prayed that the period he spent in remand while the trial was ongoing be taken into account.
5. On its part, the Respondent urged this court to be guided by the Sentencing Policy Guidelines which considered the gravity of the offence, the threat of violence to the victim and the type and nature of weapon that was used. It stated that the Applicant was jointly charged with others on three (3) Counts of robbery with violence but that they were only convicted on two (2) Counts only. It pointed out that at the material time, the Applicant and his accomplices were armed with dangerous weapons, being pangas, rungas and swords and they were found in possession of some of the items they had stolen. It also asked this court to look at the injuries that the victim sustained during the incident.
6. It acknowledged that although the Recommendation letter dated 5<sup>th</sup> March 2025 showed that the Applicant was of good character, it was categorical that the sentence that was imposed had to be commensurate with his moral blameworthiness at the time of commission of the offence. It, therefore, urged this court not to

interfere with the sentence that was meted out by the Trial Court and upheld by the appellate court.

7. According to the Pre-sentence Report of Mariam Korir, Probation Officer, Vihiga dated and filed on 14<sup>th</sup> November 2025, the Applicant was thirty-nine years old and had stayed in prison for twenty (20) years serving life imprisonment. He attended Koitabut Primary School, Chepsonoi Primary School and Oshat Primary School where he dropped out at Class Six due to indiscipline issues that had led to frequent conflicts and absenteeism. Thereafter, he engaged in small-scale farming at home until the time of his arrest.
8. He was not married and had no children. He admitted to the use of alcohol which attributed to peer pressure and idleness which was common among the youth in his home area. He had a physical disability which was as a result of the incident that led to his arrest and conviction. The loss of a leg affects his mobility and general wellbeing in custody. He reported that negative peer influence and a desire for quick financial gain contributed to his involvement in the offence. He added that their leader and his brother died during the commission of the offence as he sustained severe injuries which led to the amputation of one of his legs.
9. He was remorseful for his actions and acknowledged that poor decision-making, youthful recklessness and association with delinquent peers were major factors that led to the criminal conduct.

10. His family was willing to provide emotional, social and material support should he be released. They reported that they had maintained contact with him and were committed to assist him re-integrate back into the society. They vouched for his re-sentencing.
11. The Local Administration and the community reflected strong reservations regarding his return to the community due his family's history of conflict with the law and repeated involvement in criminal behaviour. They lacked confidence that he would remain law-abiding. They were firmly against his re-sentencing primarily due to public safety considerations and that the risk of re-offending remained high.
12. 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.
13. 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.
14. 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 Appellant 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.

15. The facts of the case showed that on the material night of 1<sup>st</sup> and 2<sup>nd</sup> March 2005, at Shamakhokho Village, Jeveveli Sub-location in Vihiga District within Western Province, the Appellant, jointly with others, while armed with offensive weapons namely pangas and rungus, robbed Joseph Senelwa, Bonface Inzihia and Peter Muchiri of various items and at or immediately before or after the time of the robbery wounded the said Joseph Senelwa, Bonface Inzihia and Peter Muchiri.

16. As can be seen hereinabove, one of the objectives of sentencing and/or incarceration was majorly to rehabilitate offenders. Having perused the Pre-Sentence Report, this court was persuaded to find and hold that the same had been achieved herein as the Appellant herein had undertaken life skills that would enable him be re-integrated back to the society. This court also noted that the value of the goods that were stolen was also low. Even so, the victims had remained traumatised and one of them was scared that the Appellant would harm him if he was released from jail.

17. Accordingly, having considered the facts of this case, the Appellant's mitigation, the Prosecution's response thereto, the Pre-Sentence Report, and the recommendation letter by Timothy Turunya, the Officer in-charge Naivasha Maximum Security Prison,

this court came to the firm conclusion that a reduction of his death sentence that was commuted to life imprisonment to a sentence of thirty (30) years imprisonment would be reasonable in the circumstances of this case.

18. As the Appellant'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).

19. 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).

20. 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...”**

21. 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.**

22. The Appellant was arrested on 2<sup>nd</sup> March 2005. Although he was granted bond, he did not seem to have posted the same. Judgment was delivered on 4<sup>th</sup> June 2008. However, there is no indication in the file when he was sentenced. Be that as it may, he has been in prison for twenty (20) years. This was a period that ought to be taken into consideration while computing his sentence.

23. Taking into account the one third (1/3) remission of his reviewed sentence of thirty (30) years, he ought to have served twenty (20) years imprisonment. Going further, bearing in mind the period he spent in remand while his trial as ongoing from 2<sup>nd</sup> March 2005, it was evident that he has since completed his sentence.

### **DISPOSITION**

24. Accordingly, the upshot of this court's decision was that although the Appellant's conviction remained undisturbed as it was safe, his sentence of death which was later commuted to life in an executive order of the President of the Republic of Kenya be and is

hereby set aside and substituted with a sentence of thirty (30) years imprisonment which is to run from the date of the sentence of the lower court.

25. For the avoidance of doubt, the period between 2<sup>nd</sup> March 2005 and 4<sup>th</sup> June 2008 which was the only available date this court could work with, be and is hereby taken into account while computing his sentence in line with Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya).

26. As the Applicant has since completed his sentence, it is hereby directed that he be and is hereby released from custody forthwith unless he be held for any other lawful cause.

27. It is so ordered.

**DATED** and **DELIVERED** at **VIHIGA** this **17<sup>th</sup>** day of **December** 2025

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