

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT VIHIGA
CRIMINAL MISCELLANEOUS APPLICATION NO E100 OF 2024
WYCLIFFE LUDENYO AIKA.....APPLICANT
VERSUS
REPUBLIC.....RESPONDENT

SENTENCE

1. In its decision that was delivered on 30th October 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 Applicant herein to file his mitigation documents for consideration by this court. The Applicant herein filed his documents in support of his mitigation on 15th January 2026.
3. The parties did not file any Written Submissions on the said limb. This Sentence is, therefore, based on their submissions on mitigation that was orally given in court.

LEGAL ANALYSIS

4. The Applicant submitted that he been reformed during the thirteen (13) years that he had been incarcerated. He admitted that he was

not well behaved before he was arrested. He prayed for at least twenty (20) years in prison and promised to educate the youth and the community the consequences of engaging in crime. He vowed never to commit the offence again. He sought for forgiveness from the Complainant and asked this court to give him a second chance to be reunited with his family. He also urged this court to consider the period that he spent in prison.

5. On its part, the Respondent submitted that the Muruatetu case did not outlaw the death sentence. It urged this court to consider the nature and gravity of the offence as was provided in the Judiciary Sentencing Guidelines and uphold the death sentence which was commensurate with the offence that the Applicant herein had committed. It pointed out that in the event this court was inclined to review the sentence, then it ought to consider the circumstances of the case and mete out an appropriate sentence.
6. According to the Pre-sentence Report of Everlyne Milimu, Probation Officer, Vihiga dated 1st December 2025 and filed on 2nd December 2025, the Applicant was thirty-two (32) years old and had spent eleven (11) years in prison. He attended Kimarani Primary School but dropped out in Standard Five (5) in 2005 due to poverty. He, thereafter, did farm jobs and hawking snacks as a means of survival. He had not married and had no children by the time he was arrested as he was still young. He was a Christian but abused alcohol which he believed got him in trouble as he had slept beside the road when he was arrested.

7. He denied any involvement in the offence and claimed that the actual perpetrators were not arrested hence he was suffering on a crime he never committed. He added that the victims were not known to him and that he first saw them in court. He hoped that one day justice would be served and one day he would get out of jail and the real culprits would face the full force of law.
8. It was reported that efforts made to reach out to the victims were not successful as they had relocated elsewhere and nobody knew where they had moved.
9. His family vouched for him and remained supportive and willing to assist with his reintegration should the court consider resentencing him. They stated that they had plans to resettle him.
10. The local administration and the community noted that he was a good and hardworking person and had never been found in any criminal activities in the area. They believed that he was wrongly targeted. They advocated for his release or a reduced sentence promising to support him on his resettlement and rehabilitation. The Probation Office recommended for his re-sentencing.
11. According to the remarks by the Prison Officers, the Applicant had demonstrated discipline, cooperation and respect toward both the prison staff and fellow inmates and had not been involved in any form of misconduct since his incarceration. They added that he had shown a strong commitment to personal growth and rehabilitation.
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 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.
15. It was clear from the facts of the case that on the material day of 30th September 2013 at 9.30p.m, at Chamasilihi Village, Mbale Sub-Location, Izava North Location in Vihiga County, the Applicant jointly with others not before the court while armed with offensive weapons namely pangas and rungus robbed off Lucy Nyaleso Mole six (6) handbags, one mobile phone make Nokia 1280 and cash Kshs 2000/= all valued at Kshs 11,000/= and at the time of such robbery threatened to use actual violence to the said Lucy Nyaleso Mole.

16. 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.

17. Having considered the facts of this case, the Applicant's mitigation, the Prosecution's response thereto, the Pre-Sentence Report, the Recommendation Letter by Timothy Tirunya ASP for the Officer in-charge Naivasha Maximum Prison dated 16th December 2025, 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 (30) years imprisonment would be reasonable in the circumstances of this case.

18. 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).

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. A perusal of the charge sheet herein indicated that the Applicant was arrested on 30th September 2013. Although he was granted bond, he did not seem to have posted the same. He was sentenced on 24th October 2014. It was, therefore, this court’s view that that was a period that ought to be taken into account while computing his sentence.

DISPOSITION

23. 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 which was later commuted by Executive Order of the President of Kenya to life imprisonment 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.

24. For the avoidance of doubt, the period which he spent in custody from 30th September 2013 until 23rd October 2014 be and is hereby taken into account while computing his sentence in accordance with Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya).

25. It is so ordered.

DATED and **DELIVERED** at **VIHIGA** this **15th** day of **January** 2026

J. KAMAU
JUDGE