

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT VIHIGA**  
**CRIMINAL MISCELLANEOUS APPLICATION NO E093 OF 2024**

**ABISAI ABWONZA CHOGO.....**  
**APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**SENTENCE**

1. In its decision that was delivered on 30<sup>th</sup> 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. He filed the same on 7<sup>th</sup> February 2025.
3. The parties did not file any Written Submissions on mitigation. This Ruling is, therefore, based on their submissions on mitigation that was orally given in court.

**LEGAL ANALYSIS**

4. The Applicant expressed remorse for having committed the offence. He sought for forgiveness from the Complainant. He stated that he

had reformed and had learnt life skills that would enable him eke a living and take care of his family. He asked this court to give him a second chance and undertook to educate the youth and community of the consequences of committing crime. He stated that he was arrested on 3<sup>rd</sup> February 2016 and sentenced in November 2016. He urged this court to consider the period that he spent in remand as his case was going on when reviewing his sentence.

5. On its part, the Respondent submitted that the Applicant was convicted of robbery with violence which was a serious offence and sentenced to death which was later reduced to life imprisonment by the Court of Appeal (**sic**). It stated that in as much as the Probation Office had recommended a non-custodial probationary sentence, this court should mete out a sentence that was commensurate with the offence that was committed.
6. According to the Pre-sentence Report of Kelvin Buluma Adeti, Probation Officer, Vihiga dated 15<sup>th</sup> December 2025 and filed on 9<sup>th</sup> January 2026, the Applicant was thirty-three (33) years and had spent ten (10) years in prison. He attended Humulalu and Angayu Primary Schools but dropped out in Standard Three (3) in 2002 due to difficulty in grasping the academic content. He, thereafter, engaged in casual work in the village. He later moved to Eldoret where he worked as a security guard. His family lost his contacts. He eventually returned home and moved to Vihiga where he was arrested for the offence herein.

7. He was not married and did not have any dependents. He had a history of alcoholism and associated with peers who abused drugs. He pleaded with the court to grant him a second chance to begin a new life, expressing remorse and a desire to reform.
8. His family expressed deep emotional relief upon learning that the Applicant was being considered for re-sentencing, viewing it as an answered prayer. They pleaded with the court to consider the period he had already served in custody and to exercise leniency noting that he had learned valuable life lessons, he was remorseful and that he had transformed into a responsible individual. They further expressed willingness to support his reintegration should he be granted an early release.
9. The local administration and the community were generally supportive of the proposed re-sentencing. They pointed out that the Applicant associated with young people who were involved in crime which may have influenced him to engage in crime. They expressed confidence that with appropriate guidance and supervision, he could be integrated as a responsible and productive member of the society.
10. The prison officers provided a positive report regarding his conduct and overall behaviour during his time in custody. The Probation Office recommended for his re-sentencing. Efforts to trace the victim were unsuccessful.
11. 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.

12. 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.

13. 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.

14. It was clear from the facts of the case that on the material day of 24<sup>th</sup> November 2015 at Chavakali Location within Vihiga County, the Applicant robbed one Isaac Nyapola of Kshs 12,060/=, one phone make Oling valued at Kshs 2100/= and one camera, make Kodak, valued at Kshs 16,000/= and immediately before such robbery he threatened to shoot the said Isaac Nyapola with a pistol.

15. 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.

16. Having considered the facts of this case, the Applicant's mitigation, the Prosecution's response thereto, the Pre-Sentence Report, the Recommendation Letter by Shadrack O. Opanga (IP) dated 3<sup>rd</sup> May 2021, the Officer in-charge Kisumu Maximum Prison, 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. A non-custodial sentence for a person who had threatened to shoot his victim with a gun after the incident was untenable.

17. 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).

18. 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).

19. 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:...**

**Time already spent in prison by the convict...”**

20. 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.**

21. A perusal of the Charge Sheet herein indicated that the Applicant was arrested on 3<sup>rd</sup> February 2016. Although he was granted bond, he did not seem to have posted the same. He was sentenced on 23<sup>rd</sup> November 2016. It was, therefore, this court’s view that that was a period that ought to be taken into account while computing his sentence.

**DISPOSITION**

22. 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 by the President 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.

23. For the avoidance of doubt, the period that he spent in custody between 3<sup>rd</sup> February 2016 and 22<sup>nd</sup> November 2016 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).

24. It is so ordered.

**DATED** and **DELIVERED** at **VIHIGA** this **15<sup>th</sup>** day of **January** 2026

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