



REPUBLIC OF KENYA



**Gititi v Republic (Criminal Revision Application E247 of 2025)
[2026] KEHC 1202 (KLR) (4 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 1202 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
CRIMINAL REVISION APPLICATION E247 OF 2025
RM MWONGO, J
FEBRUARY 4, 2026**

BETWEEN

JAMLICK KITHU GITITI APPLICANT

AND

REPUBLIC RESPONDENT

JUDGMENT

Background

1. The applicant was charged alongside others with murder contrary to section 203 as read with section 204 of the Penal Code in Embu HCCRC 7 of 2013. He pleaded not guilty and the plea was duly entered. The matter was heard and the applicant was convicted and sentenced to 20 years imprisonment. It was ordered that the period of 28 days spent in custody be considered and deducted from the sentence.

The Application

2. Through his undated application filed on 22nd April 2025, the applicant seeks the following orders:
 1. Spent;
 2. That this Honourable Court be pleased and Order Embu County Referral Hospital to carry out a check-up and issue a medical report touching on the Applicant herein;
 3. That this Honourable Court be pleased and Order the Officer in Charge Kenya Prisons Services-Embu to issue a Report touching on the Applicant herein;
 4. That this Honourable Court be pleased and Order the Probation Officer-Embu office to issue a Report touching on the Applicant herein;



5. That this Honourable Court be pleased and Review the Applicant's Sentence of 20 years to a non-custodial sentence considering his deteriorating health and experience; and
 6. That this Honourable Court do make any other order it deems fit in the circumstances.
3. Citing the hardships, he is undergoing while in custody, the applicant stated that he has developed chronic illnesses which are not managed adequately in prison. That he regrets the offence and he has since made strides in reforming himself through learning new and useful skills. It was also his case that his medical condition requires keen medical attention which attention may not be achieved if he stays in custody. He urged the court to change the custodial sentence to a non-custodial one.

Parties' Submissions on the application

4. The application was canvassed by way of written submissions as directed.
5. The applicant relied on the case of *Muthoni v Republic* [2025] KEHC 3257 (KLR) and the 2023 Judiciary Sentencing Policy Guidelines. He submitted that he suffers from a chronic heart problem for which he requires medical intervention that is costly. He said that he has used the time he spent in custody to learn useful skills which. Once he is granted a non-custodial sentence, he said, he will employ those skills to be a good citizen, which the court can grant on medical grounds. He also relied on the decision of the Supreme Court in *Muruatetu & another v Republic; Katiba Institute & 5 others (Amicus Curiae)* [2017] KESC 2 (KLR) (*Muruatetu 1*) He urged the court to review his sentence keeping in mind the guidelines for re-sentencing.
6. The respondent relied on section 362 and 364 of the Criminal Procedure Code and stated that the court lacks jurisdiction to determine the application because the impugned sentence was passed by the High Court which is a court of concurrent jurisdiction. Thus, the Court has since become *functus officio*. It also relied on the cases of *Joseph Maburu alias Ayub v Republic* [2019] KEHC 1172 (KLR) and *Muruatetu 1*. It stated that the time spent in custody had already been considered by the Judge at the time of sentencing in accordance with section 333(2) of the Criminal Procedure Code.

Issues for determination

7. The issues for determination are:
 1. Whether the court has jurisdiction to entertain the application; and
 2. Whether the court should grant the orders prayed.

Analysis and Determination

8. The revisionary power of the High Court is drawn from its supervisory jurisdiction pursuant to Article 167(6) & (7) of *the Constitution* which provides:
 - “(6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.
 - (7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.” [Emphasis added]



9. Section 362 of the Criminal Procedure Code provides as follows on the High Court’s supervisory jurisdiction:

“The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.” [Emphasis added]

10. In a murder trial, the High Court sits as a trial court of original jurisdiction. It did so in this case, and passed the sentence following the findings of the Supreme Court in Muruatetu 1. There is provision for resentencing hearings. In that case, the Supreme Court, donated jurisdiction to the High Court to rehear sentences in murder cases even though it sat to hear the cases in the first instance. Following Muruatetu 1, Paragraph 4.8.18 of the Judiciary Sentencing Policy Guidelines, 2023, emerged. It provides as follows:

“Resentencing cases shall be handled by the ‘Sentencing Court’ – e.g., if the last court that sentenced the convict was the Court of Appeal, then the resentencing hearing shall also be handled at the Court of Appeal and not a lower court. This applies mutatis mutandis to cases in either superior or inferior courts.”

11. In *Muruatetu & another v Republic; Katiba Institute & 4 others (Amicus Curiae)* [2021] KESC 31 (KLR) (*Muruatetu 2*), the Supreme Court gave directions on resentencing as follows:

- “9. To obviate further delay and to avoid confusion, the court issued the following guidelines: -
- a. The decision of *Muruatetu* and the guidelines herein were applicable to sentences of murder under sections 203 and 204 of the Penal Code only.
 - b. The Judiciary Sentencing Policy Guidelines were to be revised in tandem with the new jurisprudence enunciated in *Muruatetu*.
 - c. All offenders who had been subject to the mandatory death penalty and desired to be heard on sentence were entitled to a re-sentencing hearing.
 - d. Where an appeal was pending before the Court of Appeal, the High Court would entertain an application for re-sentencing upon being satisfied that the appeal had been withdrawn.
 - e. In the re-sentencing hearing, the court had to record the prosecution’s and the appellant’s submissions under section 329 of the Criminal Procedure Code, as well as those of the victims before deciding on a suitable sentence.
 - f. An application for re-sentencing arising from a trial before the High Court could only be entertained by the High Court, which had jurisdiction to do so and not the subordinate court...”



12. Looking at these guidelines, it is clear that the High Court's revisionary powers expand to its own findings on sentence where it was exercising its original jurisdiction in murder trials. Therefore, this court bears the relevant jurisdiction to entertain this application.
13. The second issue is whether the sentence should be reviewed from a custodial sentence to a non-custodial one on medical grounds. The applicant has argued that he suffers from a chronic illness for which he needs medical intervention that is expensive. In considering resentencing, the court must consider whether the trial court considered mitigation. In this case, the court considered the applicant's mitigation which was duly recorded and considered by the court. The trial court noted that the applicant who was the 2nd accused person has school going children who relied on him for financial provision. The issue of chronic illness appears through this revision application as the ground in support thereof. He produced medical documents in support of the application. The other basis is the fact that he his family's breadwinner.
14. In *Muruatetu 2*, the Supreme Court gave guidelines on what to consider before reviewing a sentence, as follows:

“In a sentence re-hearing for the charge of murder, both aggravating and mitigating factors such as the following, would guide the court: -

 1. Age of the offender;
 2. Being a first offender;
 3. Whether the offender pleaded guilty;
 4. Character and record of the offender;
 5. Commission of the offence in response to gender-based violence;
 6. The manner in which the offence was committed on the victim;
 7. The physical and psychological effect of the offence on the victim's family;
 8. Remorsefulness of the offender;
 9. The possibility of reform and social re-adaptation of the offender; and,
 10. Any other factor that the court considered relevant.”
15. The applicant stated that he is remorseful and wishes that the court reconsiders his sentence. He has demonstrated that he is making the best out of his time in custody, and has acquired some skills which have aided his rehabilitation. It is noted that the 20-year imprisonment sentence was a departure from the statutorily prescribed death sentence prescribed upon conviction for the offence of murder. The trial court, in compliance with section 333(2) of the Criminal Procedure Code, considered the time spent in custody pending trial as part of the sentence imposed.

Conclusions and Disposition

16. It is clear from the foregoing that the court did everything necessary to accord the applicant a lenient sentence. A review under section 333 (2) CPC was also conducted from which his sentence was also reduced. The nature and seriousness of his illness has not been demonstrated as incapable of being properly managed whilst in prison.



17. In light of the foregoing discussion, there is no proper basis for reviewing the sentence imposed by the trial Court. The reasons given in support of his application are not persuasive to warrant changing the sentence to a non-custodial one. The application is therefore hereby dismissed.

18. Orders accordingly.

DELIVERED ELECTRONICALLY, DATED AND SIGNED AT EMBU HIGH COURT THIS 4TH DAY OF FEBRUARY, 2026, PURSUANT TO NOTICE ISSUED ON 27TH JANUARY, 2026 AS TO ELECTRONIC DELIVERY.

R. MWONGO

JUDGE

