

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT VIHIGA
CRIMINAL MISCELLANEOUS APPLICATION NO E070 OF 2024
BONFACE AGOLOMBA ALIAS NANDWA CHENELWA.....
APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

SENTENCE

1. In its decision that was delivered on 18th December 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. On 3rd March 2026, he filed a Certificate of National Trade Test grade III showing that he had gained skills in Carpentry and Joinery. He promised to file a letter of Recommendation from the Officer-in-charge of Kamiti Maximum GK Prison as the same had not been written because he did not know that the same was required by the court.

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 sought the forgiveness of the Complainant for having committed the offence. He promised not to commit such an offence again as he was now fully reformed. He averred that he had learnt many skills such as carpentry, welding and Theology to enable him be rehabilitated in the society.
5. He stated that his Co-Accused persons were re-sentenced to twenty (20) years imprisonment by the Court of Appeal. He urged this court to mete on him a sentence that he would be able to complete. He pointed out that he was arrested on 5th May 2005 and sentenced in 2009 on a date and month he said he could not remember.
6. On its part, the Respondent noted that the Pre-Sentence Report had shown that the Applicant had been rehabilitated. It urged this court to balance the interests of the Complainant who was injured during the incident and was still bitter and fearful of the Applicant with the interests of the Applicant who was now rehabilitated.
7. According to the Pre-sentence Report of J. Sahani, Probation Officer, Vihiga dated 6th February 2026 and filed on 10th February 2026, the Applicant was aged forty-three (43) years old and had stayed in prison for twenty (20) years. He attended Matzigulu Primary School but did not complete his primary education due to lack of school

fees. Thereafter, he engaged in casual employment mainly operating a boda boda along the Mbale-Matsigulu-Gisambai route. He cultivated food crops such as maize. He was arrested while still single.

8. Regarding the circumstances of the offence herein, he explained that he was attacked by a group of people who were armed with crude weapons as a result of which he sustained serious injuries. He pointed out that he did not play a major role in the offence but was, nevertheless, arrested and charged. He expressed remorse and pleaded with court to be lenient during his re-sentencing. He added that the long incarceration had led to significant personal reform having learnt the consequences of crime.
9. His family reported that he had lived a straightforward life prior to his arrest. It asserted that he did not abuse drugs and had no known involvement in criminal activities. However, it noted that he had conflicts with his uncle over the use of his father's land. It was uncertain about his involvement in the robbery. It believed that the long incarceration had taught him a significant moral lesson. It was prepared to support him in case he was released.
10. The victim was a retired Chief. He stated that he was robbed at night by the Applicant and others who were his neighbours. He pointed out that he was left with visible scars on the right side of the head from the panga cuts, a slightly swollen cheek, a hearing impairment on the right ear and a cut on his right-hand index finger.

11. He asserted that the Applicant was part of a criminal group that was involved in a series of theft cases. He pointed out that one of the Applicant's Co-Accused persons was acquitted but that he later committed murder and was now serving a life sentence while the others had since died. He expressed concern that if the Applicant was released, he could reconstitute another criminal gang posing a risk to the community.
12. The local administration and the community noted that the Applicant had been in prison for twenty-one (21) years and they believed that he had reformed. They pointed out that he used to be part of a gang which save for the two (2) of who were serving jail terms, the rest had died. They believed that there was no threat in the event the Applicant was released.
13. According to remarks from the Kamiti Prison Welfare Officers, the Applicant had demonstrated significant improvement in his behaviour. They stated that he participated in both social and skill-based rehabilitation programs and had obtained certificates of completion. They had no objection to his application for re-sentencing.
14. The Probation Office recommended that the court reviews his life sentence and substitutes the same with a definite term of imprisonment that reflected both justice and rehabilitation.
15. Notably, the principle of sentencing was fairness, justice, proportionality and commitment to public safety. The main objectives of sentencing were retribution, incapacitation,

deterrence, rehabilitation and reparation. The Sentencing Policy Guidelines in Kenya had added community protection and denunciation as sentencing objectives. The objectives were not mutually exclusive and could overlap.

16. 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.

17. 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 an 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.

18. It was clear from the facts of the case that on the material day 25th January 2004, jointly with others and while armed with dangerous weapons namely pangas, axes and rungus, the Applicant robbed James Kabaka Likeya of cash of Kshs 2,000/= and one (1) torch valued at Kshs 80/=, totalling Kshs 2,080/= and at or immediately before or immediately after the time of the robbery used personal violence on the said James Kabaka Likeya.

19. 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.

20. Having considered the facts of this case, the Applicant's mitigation, the Prosecution's response thereto, the Pre-Sentence Report, the remarks of the Welfare Officers of Kamini Maximum GK Prison in the Pre-Sentence Report, the Applicant's Certificate of completion on the rehabilitation programs, this court came to the firm conclusion that a reduction of his death sentence that was commuted to life to a sentence of thirty (30) years imprisonment would be reasonable in the circumstances of this case.

21. 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).

22. 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).”

23. 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...”

24. 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.**

25. A perusal of the Charge Sheet herein indicated that the Applicant was arrested on 28th April 2005. He did not appear to have been granted bond and/or been released on the same. He was sentenced on 4th April 2009. It was, therefore, this court’s view that that was a period that ought to be taken into account while computing his sentence.

DISPOSITION

26. 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.

27. For the avoidance of doubt, the period that he spent in custody between 28th April 2005 and 3rd April 2009 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).
28. Taking into account the remission of one third (1/3) and the period of twenty (20) years that the Applicant had remained in remand and in prison, it was evident that he had since completed his sentence. In this regard, it is hereby directed that the Applicant be and is hereby released from custody forthwith unless he be held for any other lawful cause.
29. It is so ordered.

DATED and **DELIVERED** at **VIHIGA** this **3rd** day of **March** 2026

J. KAMAU
JUDGE