

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT VIHIGA**  
**CRIMINAL MISCELLANEOUS APPLICATION NO E056 OF 2025**  
**ALFRED EYASI KINAMUNDU.....APPLICANT**  
**VERSUS**  
**REPUBLIC.....RESPONDENT**  
**SENTENCE**

**INTRODUCTION**

1. In its decision that was delivered on 24<sup>th</sup> February 2025, in 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)**, where the Applicant herein was one of the Petitioners, 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 on 28<sup>th</sup> January 2026 with regard to his undated Notice of Motion application filed on 23<sup>rd</sup> October 2025. He filed his documents in support of his mitigation on even date. This Ruling is based on the oral mitigation the parties presented in this court.

**LEGAL ANALYSIS**

3. In his mitigation, the Applicant sought forgiveness of the Complainant. He pointed out that he had been in prison for fifteen (15) years. He stated that he was very sick and prayed that he be given a chance to be with his people.
4. On its part, the Respondent submitted that the Applicant had been charged with a grievous offence, that of robbery with violence. It averred that although the Pre-Sentence Report was positive, this court ought to balance the offence the Applicant had committed, his reformation and the views of the victim.
5. According to the Pre-Sentence Report of Rose A. Otieno, Probation Officer, Vihiga dated 4<sup>th</sup> March 2026 and filed on 5<sup>th</sup> March 2026, the Applicant was fifty-seven (57) years old and had been in custody for eleven (11) years. He dropped out of school at Standard Seven (7) in Madera Primary School due to lack of school fees.
6. He stayed at home tending to animals until 1987 when he left to his uncle's place at Eldoret. He worked casually alongside his uncle who was a mason for two (2) years. He later went back home and got married and was blessed with children. He later separated from her and re-married. He was an alcoholic and a smoker which was the reason that both his wives left him. Both his wives later died. His house collapsed after being infested by termites.
7. He regretted his actions and exhibited understanding and appreciated that he was sentenced to correct his behaviour. During his incarceration, he had undergone rehabilitation and undertaken several theological courses in Biblical studies.

8. However, he fell sick while in prison and was diagnosed with throat cancer which was spreading fast to other parts of his body. He was also HIV positive. He had been in and out of hospital and was last admitted and stayed in hospital for a whole month undergoing treatment and chemotherapy. He spent most of his work sleeping since he could not engage in any other meaningful work. He expressed fear of dying in prison and pleaded with the court to consider his health condition.
9. His family pleaded for leniency wishing that the court considers his health condition and review the sentence to a shorter term so that one day he could be released from prison so that they could nurse him from home. They were willing to construct a house for him, support his medical care, food provisions and general upkeep.
10. The Local Administration and the community expressed knowing the inmate before incarceration and did not hold any reservation against any rehabilitative measures the court would deem fit.
11. According to the remarks by the Prison Officers, the Applicant was of good behaviour during incarceration and had received support from his family which visited him often in prison. The Probation Office recommended to review of the Applicant's sentence due to his health condition and his positive attitude on rehabilitation.
12. 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. It was important that the sentence communicate to the community, condemnation of the criminal act. The sentence would indirectly send a strong signal to deter would be offenders from committing such an offence.

13. The objectives were not mutually exclusive and could overlap. However, if the court did not take into account the three (3) objectives of deterrence, retribution and denunciation of the offence at the time of sentencing an accused person, chances of that person being reintegrated in the society would be next to impossible as there were possibilities of being harmed. The sentence had to be hinged on retributive justice for the secondary victims. 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 the on the material day of 3<sup>rd</sup> July 2012, at Madeya in Hamisi of Vihiga County, the Petitioner jointly with others, while armed with offensive weapons namely rungus and metal bar, robbed Thomas Aduma Memba of one Nokia and one Techno phone all valued at Kshs 4200/=, being the property of Dickson Kibisu and four (4) bed sheets, blankets, cups and bed covers, a dozen of plates, eight (8) sufurias, assorted clothes, three (3) bags, two (2) dozens of water glasses, set of table

clothes and a kettle, all valued at Kshs 23,800/= and being the property of Mideko Memba.

15. At the material time, they were armed with offensive weapons being rungas and metal bar and at or immediately before or after the time of such robbery they wounded Thomas Aduma Memba.

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 dated 24<sup>th</sup> June 2025 by Fredrick Ouko SSP on behalf of the Officer In-Charge Kibos Maximum Security Prison, the Applicant's Certificates of completion on various rehabilitation programs and the fact that it was the Applicant that hit the complainant on the head with a metal bar which was produced as exhibit in the Trial Court, 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. The court appreciated the Applicant's health condition but noted from the Social Enquiry that his Co-Accused person accused him of having been the mastermind of the robbery. It would,

therefore, be unfair if he was sentenced to a shorter period than his two (2) other Accused person's. Bearing in mind the remission period of one third (1/3) of his sentence, the short period his family prayed for could be achieved.

19. 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).

20. 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).

21. 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...”**

22. 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.**

23. The Applicant was arrested on 3<sup>rd</sup> July 2012. Although granted bond he did not seem to have posted the same. He was sentenced on 26<sup>th</sup> May 2014. This was a period that therefore ought to be taken into consideration while computing his sentence.

#### **DISPOSITION**

24. 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 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 3<sup>rd</sup> July 2012 and 25<sup>th</sup> May 2014 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. It is so ordered.

**DATED** and **DELIVERED** at **VIHIGA** this **10<sup>th</sup>** day of **March** 2026

**J. KAMAU  
JUDGE**

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