



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA COUNTY

COURT NAME: MOMBASA HIGH COURT

CASE NUMBER: HCCRREV/E462/2025

BRIAN OTIENO ONGALO VS THE REPUBLIC

RULING

**(Revision of sentence emanating from Mombasa HCCR No. 13 of 2019)**

- 1. The Applicant was charged with and convicted of the offence of murder contrary to Section 203 as read together with Section 204 of the Penal Code. Upon conviction, he was sentenced to serve ten (10) years' imprisonment.**
- 2. The Applicant's circumstances were brought to the attention of this Court during a routine supervisory visit to the correctional facility. The Court observed that the Applicant was in a grave medical condition. Consequently, a sentence review report was prepared and filed by the Probation Officer, Ms. Mwanajuma Mzee, given the seriousness of the original offence and the need for careful judicial consideration.**
- 3. Section 4 of the Probation of Offenders Act grants this Court the discretion, in appropriate circumstances, to release an offender on probation, having regard to factors such as age, character, antecedents, home surroundings, health or mental condition, the nature of the offence, and any extenuating circumstances surrounding its commission.**
- 4. The principles guiding the exercise of such discretion were articulated in *Kimutai v Republic (2024) KEHC 6871 (KLR)*, where the Court identified relevant considerations in determining whether to impose a custodial or non-custodial sentence. These include:(a) The gravity of the offence;(b) The offender's criminal history;(c) The character and**



- demonstrated remorse of the offender;(d) The need to protect the community; and(e) The offender's responsibility toward dependants or third parties.
5. Further guidance is found in *Republic v Felix Madalitso Keke, Confirmation Appeal No. 404 of 2010 (unreported)*, where the Court emphasized that sentencing must not only serve deterrence but also uphold the broader public interest, which includes the welfare of the offender. Sentences must not be cruel, degrading, or inhuman. They must align with the overarching objectives of justice, reformation, restoration, and rehabilitation.
  6. The sentence review report, the prison progress records, and treatment notes from Coast General Hospital dated and stamped 23rd February 2026 indicate that the Applicant is forty-one (41) years old and has developed severe health complications while in custody. He suffers from spinal complications that have rendered him completely immobile and is additionally diagnosed with hypertension. He is dependent on medication, which is costly and not always sufficiently available.
  7. The Court notes that the Applicant is entirely reliant on fellow inmates for mobility and basic daily functions. His condition has placed considerable physical, psychological, and logistical strain on prison authorities and attendants. More importantly, his continued incarceration in his present state raises serious concerns regarding the preservation of his inherent dignity as a human being.
  8. The Constitution safeguards the inherent dignity of every person and the right to have that dignity respected and protected. Incarceration does not strip an individual of this fundamental right. Where imprisonment, due to extreme medical incapacity, risks resulting in conditions that are degrading or incompatible with human dignity, the Court is duty-bound to intervene.
  9. In light of the medical evidence presented, this Court is satisfied that the Applicant no longer poses a danger to society. His physical incapacity significantly diminishes any risk of reoffending. The objectives of punishment, deterrence, and community protection have, in the circumstances of this case, been sufficiently met by the period already served.
  10. The Court must balance the seriousness of the offence with the current realities confronting the Applicant. Justice is not served by imposing continued incarceration where it ceases to advance legitimate penal objectives and instead threatens constitutional guarantees, particularly the right to dignity and humane treatment.
  11. Considering the totality of the circumstances, including the Applicant's deteriorating health, the probation report, prison progress records, and the fact that his scheduled early release date is 18th March 2026, this Court finds that this is a proper case for sentence review.



**12. Accordingly, the Applicant's sentence is hereby reviewed to the period already served in custody. He shall be released forthwith unless otherwise lawfully held.**

**DELIVERED, DATED AND SIGNED AT MOMBASA THIS 25TH DAY OF FEBRUARY 2026.**

**Ruling delivered through Microsoft Teams Online Platform.**

**WENDY KAGENDO MICHENI  
JUDGE**

SIGNED BY/FOR:  
HON. LADY JUSTICE WENDY MICHENI



THE JUDICIARY OF KENYA.  
MOMBASA HIGH COURT  
HIGH COURT CRIMINAL  
DATE: 2026-02-27 19:11:23

