



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL MISCELLANEOUS E161 OF 2024

ISAAC MUCHIRI KAMAU..... 1ST
APPLICANT
PETER NJOROGE MACHARIA.....2ND
APPLICANT
LEVITICUS POGHISIO.....3RD
APPLICANT
ELIZABETH WANJIRA.....4TH
APPLICANT
SHARON CHEPTOO.....5TH
APPLICANT
HELLEN OWINO.....6TH
APPLICANT

-VERSUS-

REPUBLIC

.....RESPONDENT

RULING

1. The Applicants jointly bring this undated Application pursuant to the provisions of **Sections 362, 363, 364**

and 333 of the Criminal Procedure Code seeking revision of sentence imposed against them in the lower court. They urge the court to call for the lower court's record to satisfy itself as to legality, correctness or propriety of sentence meted out against them.

2. The Applicants were charged alongside others in the Chief Magistrate's Court at **Nakuru (Criminal Case No. E088 of 2025)** with the offence of;-

'Entering a protected area without a permit or any other lawful exemption contrary to Section 102(1) (a) as read with Section 102(1) (h) of the Wildlife Conservation and Management Cap 376 Laws of Kenya (Count 1)

and

Undertaking extractive activity in a wildlife protected area without a permit contrary to the same law (Count 2) .

They pleaded guilty, got convicted and sentenced to a fine of Kshs. 200,000/= (two hundred thousand) each or serve 2 years imprisonment. The Applicants complain that the sentence is too harsh in the circumstances as to call for its revision in the exercise

of this court's supervisory power over subordinate courts.

3. The Applicants express remorse and urge the court to consider that they are first offenders and had cooperated with the investigators. They complain that the sentence meted out against them is excessive.
4. The Prosecution Counsel opposes the Application *vide* written submissions dated 3rd December 2025 which I have perused.
5. I have considered the Application and perused the trial court's record. Indeed, the Applicants and others were so charged, convicted and sentenced before the lower court.
6. **Sections 362, 364 and 365 of the Criminal Procedure Code** empower this court to call for a subordinate court's record with a view to satisfying itself as to the legality, correctness or propriety of an order or decision made by the court, and issue appropriate orders or directions.
7. The Applicants herein do not in substance appear to be contending that the sentence meted out against them is

illegal. Rather, they want variation thereof considering the mitigation statements put forth.

8. The Supreme Court in the case of **Francis Muruatetu & Others vs Republic** has outlawed the mandatory nature of the death sentence in cases of murder brought under **section 203 as read section 204 of the Penal Code**. The apex court introduced the exercise of discretion in sentencing offenders in such cases guided by peculiar facts and circumstances attending each case. The Court proceeded to allow for re-sentencing of convicts on death row for murder in line with the principles set out in the landmark case.
9. Other superior courts subsequently applied the same principle in other cases including **Kathewa Laichena vs Republic (2018) eKLR** and **William Okungu Kittiny vs Republic (2018) eKLR** to outlaw mandatory or minimum sentences provided for by some laws including the **Penal Code** and the **Sexual Offences Act**.
10. The Supreme Court has, however, clarified in its latest decision on this controversy *to wit*; **Joshua Gichuki Mwangi & Others** in **Petition No. E018 of 2023** that

any challenge to the constitutional validity of mandatory sentences for other capital offences other than murder, or other minimum sentences that take away the court's discretionary power to decide an appropriate sentence for an offence, is welcome for determination by the High Court, and also the Court of Appeal where the High Court agrees with the Petitioner(s). This challenge is, however, to be mounted in a proper substantive Constitutional Petition and not *vide* a Miscellaneous Criminal Application such as brought by the Applicants herein. Because of the importance of such a Petition, proper Respondents would include the Director of Public Prosecutions, the Attorney General and other appropriate Interested Parties as may be identified.

11. This court will not therefore treat this Application as the Petition contemplated by the Supreme Court in **Joshua Gichuki Mwangi** *supra*. Moreover, if the Applicants think that the sentence imposed by the trial court is excessive or severe in the obtaining circumstances, the proper remedy would be an Appeal and not revision of the lower court's order as craved in this Application. The Applicants could

also wait for the regular Judiciary's Prison Decongestion Programme and try their luck. As it is, the sentence complained of is not illegal or otherwise improper. The sentence is within the legal limit prescribed by law.

12. In the premises, this Application is dismissed. However, the custodial sentences if served shall commence from the date of arrest of the Applicants on 9th January 2025 as per the charge sheet presented before the trial court.

J. M. NANG'EA, JUDGE.

Ruling dated, signed and delivered at Nakuru this 27th January, 2026.

In the presence of:

Mr Wakasyaka for the DPP.

Applicants, All present online.

The Court Assistant (Jeniffer).

J. M. NANG'EA, JUDGE.