



**Mbohi alias Boyi v Republic (Criminal Miscellaneous Application
E030 of 2025) [2026] KEHC 3869 (KLR) (24 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 3869 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CRIMINAL MISCELLANEOUS APPLICATION E030 OF 2025**

JN KAMAU, J

MARCH 24, 2026

BETWEEN

HASTING NGARAMA MBOHI ALIAS BOYI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant herein was charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. He was convicted and sentenced to death.
2. Being aggrieved by the said decision, he lodged an Appeal at the Court of Appeal in Kisumu Criminal Appeal No 78 of 2017 where his appeal on conviction was dismissed while the one on sentence was allowed to the extent that the sentence of death was set aside and substituted with a term of fifteen (15) years imprisonment with effect from the date he was first sentenced.
3. On 16th May 2025, he filed a Notice of Motion application of even date seeking for a probation order for the remaining one (1) year of his sentence. He pleaded with the court to consider that he was reformed and rehabilitated by doing correctional programs like Certificate in Lamp and Light, Prisoners Journey, Rodi-Kenya and welding. He asserted that he was remorseful and a first-offender. He added that he had been in prison for more than ten (10) years as he was arrested while still young. He prayed for a non-custodial sentence.
4. His undated Written Submissions were filed on 2nd October 2025 while those of the Respondent were dated and filed on 17th November 2025. The Ruling herein is based on the said Written Submissions which parties relied upon in their entirety.



Legal Analysis

5. The Applicant reiterated that he had fully been involved in rehabilitation programmes being provided in prison and had been counselled by spiritual leaders on how to adapt to a new environment behind the bar and what the future entails, being life after prison. He added that for the period he had been incarcerated, he had not been charged with any prison offence.
6. He pointed out that he could freely fit in the society in peace and harmony. He urged the court to allow him enjoy the benefit of the law of probation and/or consider that the period he had already served was enough punishment and he be set at liberty. He argued that that would enable him to raise a family and help in nation building.
7. On its part, the Respondent opposed the Applicant's application claiming that he ought to finish his sentence while in custody. It asserted that one of the objectives of sentencing as per Clause 1.3 of the Sentencing Guidelines was retribution and that by serving the full sentence in custody, the family of the deceased and the society would feel satisfied that the criminal justice system was functioning well when they learn that the offender had served his full sentence while in custody and that would raise the trust in the criminal justice system and communicate the community's condemnation of the criminal conduct.
8. According to the Sentence Review Report of J. Sahani, Probation Officer, Vihiga County, dated 16th December 2025 and filed on 9th January 2026, the Applicant was thirty-five (35) years old and had served nine (9) years in prison. He attended Nabwani Primary School but did not manage to join secondary school due to financial constraints. He enrolled at Lotego Polytechnic (now Sabatia Technical and Vocational Training Centre) to pursue a course in Welding and Fabrication. Upon completing Grade III Level, he secured employment at Serem Market where he worked for five (5) years until his arrest.
9. He was unmarried but consistently supported his family, especially his mother through his earnings. He was a Christian and a youth leader at his Church.
10. He demonstrated clear understanding of the requirements and conditions attached to community-based rehabilitation programs and expressed firm commitment to comply with them. He pledged to live harmoniously with neighbours, the local administration and the wider community.
11. Accounts from family members and neighbours cast doubt on the Applicant's culpability. They described the deceased as an aggressive and argumentative individual who frequently engaged in physical fights and was often beaten by others. In their view, the deceased may have sustained injuries elsewhere but because the Applicant was the last person seen with him, blame was directed towards him. His family appealed for his release emphasising his positive character, his role as a provider and his established social and spiritual ties within the community. They believed reintegration would allow him to resume his responsibilities and contribute meaningfully to society.
12. The Local Administration and the Community confirmed that he had no prior criminal record and raised no objection to his release.
13. It was reported that during his incarceration, he had undergone extensive rehabilitation including Bible Studies, guidance and counselling interventions, vocational training in welding, soap-making and other entrepreneurial skills. The Prison Authorities commended his exemplary conduct noting that he had never faced disciplinary action and currently served as a Ward In-charge. They added that he had reached stage four (4) of the rehabilitation process nearing the privileged special category and was, therefore, recommended for release under community rehabilitation.



14. The Probation Office recommended that the Applicant be considered for early release under community-based rehabilitation for the remainder period of his sentence, that is, nine (9) months on Probation Order.
15. *Probation of Offenders Act* gave courts the option of placing offenders on probation. An offender could be placed under the supervision of a probation officer for not less than six (6) months but not exceeding three (3) years. The court was under an obligation to explain to the offender the terms of a probation order when the same was imposed. An offender was required to comply strictly with the terms of the probation order the breach of which would attract a range of sanctions that were outlined in the *Probation of Offenders Act*. If an offender committed an offence during the probation term, the offender became liable to be sentenced for the original offence.
16. The issue of probation was also dealt with in the Sentencing Policy Guidelines, 2023. The same provides as follows:
 - 2.5.2 When deciding on whether to place an offender on probation, Section 4 (i) of the *Probation of Offenders Act* calls upon the court to have regard to the following information, typically contained in a pre-sentence report:
 - i. Age
 - ii. Character
 - iii. Antecedents
 - iv. Home surroundings
 - v. Health or mental condition of the offender
 - vi. The nature of the offence
 - vii. The victim impact statement
 - viii. Any extenuating circumstances in which the offence was committed
 - 2.5.3 The court must be satisfied of the offender's willingness to comply with the provisions of the probation order for it to impose the order.
17. This court considered the mitigation advanced by the Applicant and noted that the analysis of the facts of the instant case warranted a non-custodial sentence for the remaining part of his sentence as he was remaining about nine (9) months to complete his sentence. In addition, he was a first offender and had expressed remorse. His family, the Local Administration, the Community and the Prison Authority were all in consonance that the Applicant be released on community-based rehabilitation for the remaining part of his sentence. This court was convinced that he had learned his lessons after serving a substantial part of his sentence in custody and for the purpose of decongestion of prisons, it was prudent that he be released early on community-based rehabilitation.

Disposition

18. For the foregoing reasons, the upshot of this court's decision was that the Applicant's Notice of Motion application dated and filed on 16th May 2025 was merited and the same be and is hereby allowed.
19. The effect of this decision is that the Applicant be and is hereby released on Probation for the remaining months of his sentence. The Probation Office be and is hereby ordered to adopt a



structured supervision and rehabilitation roadmap that would ensure continuity of his reformation and development course until completion of the said period.

20. It is so ordered.

DATED AND DELIVERED AT VIHIGA THIS 24TH DAY OF MARCH 2026

J. KAMAU

JUDGE

