

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT CHUKA
CRIMINAL REVISION NO. E065 OF 2025

CAROLINE KAWIRA MWATHI

.....**APPLICANT**

VERSUS

REPUBLIC.....RESPONDEN

T

R U L I N G

1. Caroline Kawira Mwathi (Applicant) was charged, tried and convicted of the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The victim of the offence was one Albert Murithi Mugo alias Ngai.
2. The Applicant was sentenced to serve 18 years' imprisonment which sentence was deemed to commence from the date of her pre-trial custody.
3. The Applicant, filed the present Application for sentence revision and sought orders *inter alia* that

she be granted a non-custodial sentence or in the alternative that her sentence be reduced to the period she has served. She stated that she did not appeal as she was satisfied with the conviction; that she was a first offender; was remorseful and was sufficiently rehabilitated

4. Further, the Applicant stated that she was 60 years old and prayed for reconsideration of her sentence on account of her age.

5. In submissions dated 10th December 2025, the Applicant stated that she regretted her past actions and would not re-offend. She submitted that she came from a humble background and was the sole bread winner of her family. That she has been rehabilitated and had acquired skills while in prison including knitting; and soap making. She prayed for a second chance.

Analysis and determination

6. The Respondent filed submissions dated 17th November 2025, opposing the Application. They submitted that the Applicant was convicted of a serious charge which attracted a death sentence under section 204 of the Penal Code but for which the trial court meted out a sentence of 18 years' imprisonment. They urged that the sentence was lenient and sufficient.

7. With respect to a non-custodial sentence, the Respondent submitted that part 7.19.2 of the sentencing policy guidelines required the court to consider the seriousness of the offence considering a non-custodial sentence.

8. This court's revisionary jurisdiction is provided under Section 362 of Criminal Procedure Code which states:-

“ The High Court may call for and examine the record of any criminal proceedings before any subordinate

court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.”

9. In this case, the trial and sentencing was conducted by Gitari J. a court of equal and concurrent jurisdiction. As is trite sentencing is at the discretion of the trial court. In **Bernard Kimani Gacheru vs Republic (2002) eKLR**, the Court of Appeal held as follows:-

“ It is now settled law, following several authorities by this court and the high Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, the sentence must depend on the facts of each case.

10. Besides, and as already observed, the sentence was meted by a court of equal and concurrent jurisdiction. In **Moses Dola vs. Republic [2021] KEHC 6180 (KLR)** Lesiit J. (as she then was) held:-

***“The law is clear that the period a person was held in custody prior to being sentenced shall be taken into account. The sentence in this case was imposed by Lagat-Korir, J, a court of parallel jurisdiction, which was the trial court in this matter. That means that if the Applicant was aggrieved in the manner in which the period he spent in custody before sentence was considered, or not, his recourse is not before this court. His grievance should be addressed on appeal before the Court of Appeal.*”**

He cannot return back to this same court to consider his grievance, for two reasons. First and most, it is this court which passed the impugned sentence. Having delivered itself on the matter, this court is functus officio. Secondly, the grievance he now has should be a ground of appeal which can only be considered on appeal before the Court of Appeal.”

11. I am not persuaded to interfere with the sentence meted out by the trial court. The Applicant ought to have proceeded to the Court of Appeal to challenge both conviction and sentence.

12. In the end, the Application has no merit and is dismissed.

Orders accordingly,

**Ruling delivered, dated and signed at Chuka
this 19th day of March, 2026.**

.....

**R. LAGAT - KORIR
JUDGE**

**Ruling delivered in the presence of Applicant
acting in person, Ms Rukunga for the Republic;
Muluvi (Court Assistant)**

ORIGINAL