



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
MISC. CRIMINAL APPLICATION NO.E022 OF 2023

JOSEPH MUTUKU MUNYITHYAAPPLICANT
VERSUS
REPUBLICRESPONDENT

RULING

1. The Applicant herein was sentenced to a term of imprisonment for ten (10) years for the offence of manslaughter contrary to **Section 202 as read with Section 205 of the Penal Code**. The particulars of the offence were that on 12th June 2021 at Kivaa village, Kivaa sub-location in Masinga sub-county within Machakos County he unlawfully killed Mutuku Munyithya. The sad Mutuku Munyithya – deceased, was his brother.
2. The Applicant pleaded guilty to the charge and the record shows that before sentencing him, the learned Magistrate listened to his plea in mitigation and considered it alongside a pre-sentence report filed by the area Probation Officer.
3. The current application is for reduction of the sentence for reasons that he was a first offender, he has reformed and that he has learnt his lesson. The Applicant also contends that he was the sole breadwinner of his family and he ought to be given a chance to continue supporting them and further that considering he is 36

years old he still has energy to provide for his family. He urges this court to exercise leniency in his favour and allow the application.

4. Learned Prosecution Counsel, Miss Nyauncho, was however opposed to the application. It was her submissions that for the offence committed the sentence of ten (10) years was lenient and the application has no merit and should be dismissed.
5. I have carefully considered the application, the grounds thereof, the mitigating factors filed separately by the Applicant, the oral submissions and the law. To begin with I must state that this application is not properly before this court as it is neither an appeal nor a revision. Neither is it an application for review under **Article 50(2) (q) of the Constitution**. This court is merely being asked to set aside the sentence of the learned Magistrate and substitute it with one for the period served yet it is trite that because sentencing is the exercise of discretion an appellate court can only interfere on known legal principles. In my view such known principles would be for instance, where the sentence is excessive, or where the accused person was not granted an opportunity to mitigate. In the case of **Wagude v Republic[1983] KLR 569** the court stated:-

“[3] The appellate court may interfere with the sentence only if it is shown that it was manifestly excessive. In this instance two years’ imprisonment for stealing by a person employed in the public services was not manifestly excessive.”

6. In the case of **Dismas v Republic [1984] KLR 634** at pg 640 the court stated:

“The Appellant has stated that the sentence of 5 years imprisonment with 12 strokes which he was awarded was harsh and excessive in all the circumstances of the case. The robbery was planned over a period

and not only cunningly but skillfully carefully. It was a deliberate intentional plan to rob the bank of substantial sum of money and the appellant used his position to arrange for the commission of the crime. We are, in the light of all this, unable to say that the sentence awarded was harsh or excessive. The learned senior resident magistrate acted on no wrong principles in exercising her discretion of sentencing. For these reasons we have no ground to and we shall not interfere with the sentence.”

7. I have perused the record of the trial court and in my view and guided by the principles in the case of **Wagude v Republic (supra)** and the case of **Dismas v Republic (supra)**, I see nothing that would warrant this court to interfere with the sentence of ten years imposed by the court below. The Applicant was given an opportunity to mitigate; the learned Magistrate abided by the Sentencing Policy Guidelines by calling for a Pre-Sentence Report and the sentence of imprisonment for ten (10) years was indeed lenient in view of the nature and circumstances of the offence committed.

8. The upshot is that the application has no merit and it is hereby dismissed.

It is so ordered.

Ruling signed, dated and delivered virtually on this 30th day of April 2026.

**E. N. MAINA
JUDGE**

In the presence of:

Applicant in person (at Kamiti Medium Prison)

No appearance for Mr. Masila for the State

Mary -Court Assistant/Interpreter