



**Mutiria & 2 others v Republic (Miscellaneous Criminal Application E015 of 2025) [2026] KEHC 5567 (KLR) (28 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 5567 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT CHUKA  
MISCELLANEOUS CRIMINAL APPLICATION E015 OF 2025**

**RL KORIR, J**

**APRIL 28, 2026**

**BETWEEN**

**WILFRED KIOJI MUTIRIA ..... 1<sup>ST</sup> APPLICANT**

**SILAS KIMATHI MUTIRI ..... 2<sup>ND</sup> APPLICANT**

**JEFF MURIITHI KAGWIMA ..... 3<sup>RD</sup> APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Wilfred Kioji Mutiria (1<sup>st</sup> Petitioner), Silas Kimathi Kagwima (2<sup>nd</sup> Petitioner) and Jeff Muriithi Kagwima (3<sup>rd</sup> Petitioner) were 1<sup>st</sup>, 3<sup>rd</sup> and 2<sup>nd</sup> Accused respectively in Chuka High Court Criminal Case No. 1 of 2016. They were charged, tried and convicted of the offence of murder. They were subsequently sentenced to suffer death by Limo J. on 17<sup>th</sup> July 2017.
2. The Petitioners subsequently appealed their conviction and sentence.
3. In a judgement dated 17<sup>th</sup> May, 2024 the Court of Appeal upheld the conviction and substituted the death sentence with 30 years' imprisonment.
4. The Petitioners have now approached this court seeking revision of their sentences. Their Petition dated 28<sup>th</sup> March, 2025 seeks their sentences be reduced by taking into consideration the period spent in the pre-trial custody and, secondly; that their sentences be varied into non-custodial sentences.
5. The Petitioners cite the grounds that they were remorseful, fully rehabilitated and were willing to lead productive lives.
6. In submissions dated 21<sup>st</sup> July 2025, the Petitioners submit that they were remorseful; were first offenders; have engaged in rehabilitative programs; and were family men whose families needed their



support. They prayed to be released to serve probation which would enable them accomplish their life goals.

7. To support their Petition, the Petitioners annexed positive recommendation letters from the officer-in-charge Embu Main Prison attesting their positive transformation. They also annexed certificates in various Christian courses and positive recommendation from the prison chaplaincy.
8. The Petition is opposed by the Respondent.
9. In submissions dated 21<sup>st</sup> July 2023, the Respondent stated that failure of the trial court to specifically indicate that it had taken into account pre-trial custody period did not invalidate the sentence. The Respondent urged that the court sentenced the Petitioners to 30 years' imprisonment when they were liable to face a death sentence.
10. The sole issue for my determination is whether this court has jurisdiction to review a sentence meted out by the Court of Appeal.
11. My perusal of the file shows that the Petitioners were initially sentenced to suffer death. On appeal, the Court of Appeal reduced their sentences to 30 years' imprisonment.
12. The Petitioners have urged this court to consider their constitutional rights. That this court had power under *the constitution* to rehear their mitigation and review their sentences.
13. Article 50 of *the Constitution* provides as follows:-
  - (2) Every accused person has the right to a fair trial, which includes the right—
    - a. to be presumed innocent until the contrary is proved;
    - (b) to be informed of the charge, with sufficient detail to answer it;
    - (c) to have adequate time and facilities to prepare a defence;
    - (d) to a public trial before a court established under this Constitution;
    - (e) to have the trial begin and conclude without unreasonable delay;
    - (f) to be present when being tried, unless the conduct of the accused person makes it impossible for the trial to proceed;
    - (g) to choose, and be represented by, an advocate, and to be informed of this right promptly;
    - (h) to have an advocate assigned to the accused person by the State and at State expense, if substantial injustice would otherwise result, and to be informed of this right promptly;
    - (i) to remain silent, and not to testify during the proceedings;
    - (j) to be informed in advance of the evidence the prosecution intends to rely on, and to have reasonable access to that evidence;
    - (k) to adduce and challenge evidence;
    - (l) to refuse to give self-incriminating evidence;
    - (m) to have the assistance of an interpreter without payment if the accused person cannot understand the language used at the trial;



- (n) not to be convicted for an act or omission that at the time it was committed or omitted was not—
    - (i) an offence in Kenya; or
    - (ii) a crime under international law;
  - (o) not to be tried for an offence in respect of an act or omission for which the accused person has previously been either acquitted or convicted;
  - (p) to the benefit of the least severe of the prescribed punishments for an offence, if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing; and
  - (q) if convicted, to appeal to, or apply for review by, a higher court as prescribed by law.
- (3) -
- (4) -
- (5) -
- (6) - A person who is convicted of a criminal offence may petition the High Court for a new trial if—
- (a) the person’s appeal, if any, has been dismissed by the highest court to which the person is entitled to appeal, or the person did not appeal within the time allowed for appeal; and
  - (b) new and compelling evidence has become available.

14. The Petitioners have not shown any violation of their Constitutional rights stated above to warrant this court to re-open a matter already determined by the Court of Appeal. It is my view based on the hierarchy of courts that I have no jurisdiction to further review sentence already reviewed by the Court of Appeal.

15. It is my finding that the Petition lacks legal basis. It is dismissed.

Orders accordingly.

**RULING DELIVERED, DATED AND SIGNED AT CHUKA THIS 28<sup>TH</sup> DAY OF APRIL 2026.**

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**R. LAGAT - KORIR**

**JUDGE**

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

