



**Mwithi v Republic (Criminal Revision E075 of 2025)  
[2026] KEHC 5389 (KLR) (24 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 5389 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CRIMINAL REVISION E075 OF 2025**

**A MABEYA, J**

**APRIL 24, 2026**

**BETWEEN**

**CHARITY MUNANIE MWITHI ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Charity Munanie Mwithi ('the applicant') was convicted and sentenced to death for two offences of murder contrary to section 203 as read with section 204 of the Penal Code in Ksm HCCR Murder Case No. 26 of 2005. Her appeal to the Court of Appeal in Ksm CRA No. 306 of 2012 was dismissed whereby the conviction and sentence were upheld.
2. Later on 19/5/2019, the applicant petitioned this Court for resentencing on the grounds that the death sentence meted out on her was unconstitutional following the Muruatetu decision by the Supreme Court of Kenya.
3. This Court (Cherere J) considered the Muruatetu case by the Supreme Court and the Sentencing Police Guidelines, 2016 and resented the applicant to 40 years' imprisonment on 30/1/2020. In arriving at that decision, the Court considered the applicant's home report, the Victim Impact Report, the applicant's position that she had served about 14 years' imprisonment by then and that she had gained a lot during her incarceration including advancing her education.
4. Further, the Court considered that the victims in this case were angelic toddlers aged 4 and 7 years, respectively. It then reduced the death sentence to 40 years' imprisonment.
5. By a Motion on Notice dated 5/5/2025, the applicant applied to this Court for the review of that sentence. She pleaded that she be considered for a non-custodial sentence. That she had already served 20 years and she was remaining with 6 years and 6 months.



6. That she was remorseful and a first offender. That she was a single mother of a one teenage son who entirely depended on her. For those reasons, she sought a non-custodial sentence.
7. I have carefully considered the record. I have considered the grounds upon which the application was brought. I am alive to the circumstances of the applicant that she is a first offender, that she is a mother of a one teenage son who wholly depends on her. That she has been in custody throughout her productive life from a young age of 21 years to 41 years. That due to the experience she has undergone in prison, she is remorseful and now a changed person.
8. However, the question I ask myself is, do I have jurisdiction to do what the applicant seeks? I do not think so. The resentencing that the applicant seems to invoke are under the Community Service Order Act, No. 10 of 1998. Under that Act, this Court in the exercise of its constitutional powers and that Act, is entitled to reduce sentences that are less than 3 years and order community service.
9. That however, does not apply to the applicant. It applies to cases that are for less than 3 years or where an inmate has served the sentence meted out by the trial court and there remains less than 3 years to complete the term. That being the case, this is not a case that is fit for a review under that Act. The Court cannot assume jurisdiction unless the same is conferred by *the constitution* or by statute and not through craft. See Samuel Kamau Macharia & Another vs Kenya Commercial Bank Limited & 2 Others (2012) eKLR.
10. In the present case, I have not found any provision of the law or *the Constitution* that confers this Court with jurisdiction to revise a decision of a fellow Judge, a Judge of equal and/or concurrent jurisdiction.
11. The only body that can review the sentence under *the Constitution* is the Committee of Power and Mercy known as the Power of Mercy Advisory Committee under Article 133 of *the Constitution*. That is the forum to which the Prisons should direct the applicant to.
12. That being the case, this Court finds the application dated 5/5/2025 to be without merit and dismisses the same accordingly.

It is so ordered.

**DATED AND DELIVERED AT KISUMU THIS 24<sup>TH</sup> DAY OF APRIL, 2026.**

**A. MABEYA, FCI Arb**

**JUDGE**

