



**Kamau & another v Republic (Criminal Revision Application
E091 of 2025) [2026] KEHC 6165 (KLR) (5 May 2026) (Ruling)**

Neutral citation: [2026] KEHC 6165 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL REVISION APPLICATION E091 OF 2025**

JM NANG'EA, J

MAY 5, 2026

BETWEEN

PHILIP KAMAU 1ST APPLICANT

JOHN WAWERU 2ND APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicants bring this Revision Application pursuant to the provisions of Sections 362, 364 and 365 of the Criminal Procedure Code. These legal provisions empower this court to call for and examine the record of the lower court for the purpose of satisfying itself as to the correctness, legality, propriety and regularity of the sentence passed against the Applicant(s).
2. The Applicants were charged and convicted in Nakuru Criminal Case No. E1143 of 2025 on two counts of Entering into a protected area without a permit contrary to Section 102(1) (a) as read with Section 102(1) (h) of the Wildlife Conservation and Management Cap 376 Laws of Kenya, and undertaking extractive activity in a Wildlife Protected Area contrary to the same law. They pleaded guilty as charged and were each sentenced to two months imprisonment, or an alternative fine of Kshs. 10,000/= on count 1. Regarding count 2, each was fined Kshs. 200,000 or serve two years in prison each. They complain of inability to pay the fines owing to lack of financial means.
3. The Applicants express remorse and urge the court to consider that they are first offenders and had co-operated with the investigators and the court. They complain that the sentence meted out against them is harsh or excessive in the circumstances.
4. I have considered the Application and perused the trial court's record. Indeed, the Applicants were so charged, convicted and sentenced before the lower court.



5. Sections 362, 364 and 365 of the Criminal Procedure Code empower this court to call for a subordinate court's record with a view to satisfying itself as to the legality, correctness or propriety of an order or decision made by the court, and issue appropriate orders or directions.
6. The Applicants herein are not contending that the sentence meted out against them is illegal. Rather, they want variation thereof considering the mitigation statements put forth. The Supreme Court in the case of Francis Muruatetu & Others vs Republic has outlawed the mandatory nature of the death sentence in cases of murder brought under section 203 as read section 204 of the Penal Code. The apex court introduced the exercise of discretion in sentencing offenders in such cases guided by peculiar facts and circumstances attending each case. The Court proceeded to allow for re-sentencing of convicts on death row for murder in line with the principles set out in the landmark case.
7. Other superior courts subsequently applied the same principle in other cases including Kathewa Laichena vs Republic (2018) eKLR and William Okungu Kittiny vs Republic (2018) eKLR to outlaw mandatory or minimum sentences provided for by some laws including the Penal Code and the *Sexual Offences Act*.
8. The Applicants herein seem to take the position that the same reasoning applies to minimum sentences prescribed for offences under the Wildlife Conservation & Management Act with which they have been charged and sentenced.
9. The Supreme Court has, however, clarified in its latest decision on this controversy to wit; Joshua Gichuki Mwangi & Others in Petition No. E018 of 2023 that any challenge to the constitutional validity of mandatory sentences for other capital offences other than murder, or other minimum sentences that take away the court's discretionary power to decide an appropriate sentence for an offence, is welcome for determination by the High Court, and also the Court of Appeal in an Appeal to it.
10. Any challenge to such sentences is, however, to be mounted in a proper substantive Constitutional Petition and not vide a Miscellaneous Criminal Application such as brought by the Applicants herein. Because of the importance of such a Petition, proper Respondents would include the Director of Public Prosecutions, the Attorney General and other appropriate Interested Parties as may be identified.
11. This court will not therefore treat this Application as the Petition contemplated by the Supreme Court in Joshua Gichuki Mwangi supra. Moreover, if the Applicants think that the sentence imposed by the trial court is excessive or severe in the obtaining circumstances, the proper remedy would be an Appeal and not revision of the lower court's order as craved in this Application.
12. In the premises, this Application is dismissed.

J. M. NANG'EA, JUDGE.

RULING DATED, SIGNED AND DELIVERED AT NAKURU THIS 5TH DAY OF MAY 2026;

In the presence of:

Mr Wakasyaka for the DPP

Applicants

The Court Assistant (Jeniffer)

J. M. NANG'EA, JUDGE.

