



REPUBLIC OF KENYA



KENYA LAW
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**Ronoh v Republic (Criminal Petition E087 of 2023)
[2026] KEHC 5840 (KLR) (4 May 2026) (Ruling)**

Neutral citation: [2026] KEHC 5840 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL PETITION E087 OF 2023**

RN NYAKUNDI, J

MAY 4, 2026

**IN THE MATTER TIME SPENT UNDER REMAND CUSTODY AS PER THE
PROVISIONS OF SECTION 333(2) OF THE CPC CAP 75 LAWS OF KENYA
IN RELIANCE TO ARTICLE 48 OF THE CONSTITUTION OF KENYA 2010**

AND

**IN THE MATTER ENFORCEMENT OF THE BILL OF RIGHTS UNDER ARTICLE 22(1)
AND THE MATTER CONTRAVENTION OF ARTICLE 27(1)(2)(4), 28, 50(1), 24(1), 165(3)
AND ARTICLE 258(1) OF THE CONSTITUTION OF THE REPUBLIC OF KENYA 2010**

BETWEEN

JOHN KIPKURUI RONO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Before this Court is a Notice of Motion dated 1st day of November 2023. The Applicant seeks the following orders:
 - a. That the petitioner has been in prison for a long time
 - b. That the petitioner spent 2 years 10 months' remand custody
 - c. That the petition is seeking reduction of sentence by the time he spent in remand under Section 333(2) of the *CPC* and Articles 22(1), 27(1)(2)(4) of the *Constitution of Kenya* 2010.
2. In support of the Application is the affidavit of one John Kipkurui Ronoh who deponed as follows:



- a. That may this honorable Court be pleased to revise my terms of sentence and invoke the provisions of Section 333(2) of the Criminal Procedure Code and reduce sentence with the period I spent under the tough unbearable conditions at remand custody.
- b. That the Constitutionality of Section 333(2) of the CPC Cap 75; laws of Kenya does not contravene Article 27(1) (2)(4) of the Constitution of Kenya 2010.
- c. That may this honorable Court be pleased to give full effect to the realization of the Rights guaranteed under Article 27, 28, 22(1), 50(1)(2), 5(1) & 258(1) of the Constitution of the Republic of Kenya and incorporate legislative measures, affirmative action programs and policies designed to review the disadvantages suffered by the Petitioner because of past discrimination.
- d. That this honorable Court has unlimited original jurisdiction, powers and discretion as contemplated under Article 22(1) and 165(3)(a)(b)(f) of the Constitution of Kenya 2010.
- e. Reasons wherefore: The Petitioner prays that may this petition be granted and his sentence be reduced by the same time he was arraigned before Court through the period of time spent under prisons custody.

Decision

3. The Applicant has invoked the Constitution for this Court to have a relook of the case in so far as the verdict is concerned. In view of the complexity of the issues raised I find it persuasive to summarize the provisions as laid down by the drafters of the Constitution:

22(1) every person has the right to institute Court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.

23(1) the High Court has jurisdiction, in accordance with Art 165, to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights.

159(2) in exercising judicial authority, the Courts and tribunals shall be guided by the following principles

- (a) justice shall be done to all. Irrespective of status.
- (b) justice shall not be delayed.

165(3) Subject to clause (5), the High Court shall have-

- (a) unlimited original jurisdiction in criminal and civil matters;
- (b) jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened
- (d) jurisdiction to hear any question respecting the interpretation of this Constitution including the determination of-
 - (i) the question whether any law is inconsistent with or in contravention of this Constitution;



- (ii) the question whether anything said to be done under the authority of this Constitution or of any law is inconsistent with, or in contravention of, this Constitution;
 - (iii) any matter relating to Constitutional powers of State organs in respect of county governments and any matter relating to the Constitutional relationship between the levels of government; and
 - (iv) a question relating to conflict of laws under Art 191.
- (6) The High Court has supervisory jurisdiction over the subordinate Courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior Court.
- (7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate Court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.

258(1) every person has the right to institute Court proceedings, claiming that this Constitution has been contravened, or is threatened with contravention.

4. The Applicant in this matter seems also to have move the Court under Section 362 of the CPC and Section 333(2) of the same code. In this respect the Courts draw its jurisdiction under Art165 (6) (7) of the Constitution as follows:

- (6) The high Court has supervisory jurisdiction over the subordinate Courts and over any persons, body or authority exercising a judicial or quasi-judicial function, but not over a superior Court.
- (7) For the purposes of clause (6), the high Court may call for the record of any proceedings before any subordinate Court or person, body or authority referred to in clause (6) and may make any order or give any direction it considers appropriate to ensure the fair administration justice.

5. A Constitution is an exercise in balancing the of the individual against the democratic rights of the majority. On the one hand, the fundamental rights and freedoms of the individual must be entrenched against future legislative action if they are to be properly protected; on the other hand, the powers of the legislature must not be unduly circumscribed if the democratic process is to be allowed its proper scope. The balance is drawn by the Constitution. The judicial task is to interpret the Constitution in order to determine where the balance is drawn.

6. The issue being raised here by the Applicant is also ordained by the judicial sentencing policy guidelines 2023 which provides inter alia as follows:
Proportionality: The sentence meted out must be proportionate to the offending behaviour meaning it must not be more or less than is merited in view of the gravity of the offence. Proportionality of the sentence to the offending behaviour is weighted in view of the actual, foreseeable, and intended impact of the offence as well as the responsibility of the offender.
Equality/Uniformity/Parity/Consistency/Impartiality: The same sentences should be imposed for same offences committed by offenders in similar circumstances.
Accountability and Transparency: The reasoning behind the determination of sentence should be clearly set out and in accordance with the law and the sentencing principles laid out in these guidelines.
Inclusiveness: Both the offender and the victim should participate in and inform the sentencing process.
Totality of the Sentence: The sentence passed for offenders convicted for multiple counts must be just and proportionate, taking into account the offending behaviour as a whole.
Retribution: To punish the offender for their criminal conduct in a just manner.
Deterrence: To deter the offender from



committing a similar or any other offence in future as well as to discourage the public from committing offences. Rehabilitation: To enable the offender to reform from his/her criminal disposition and become a law-abiding person. Restorative justice: To address the needs arising from the criminal conduct such as loss and damages sustained by the victim or the community and to promote a sense of responsibility through the offender's contribution towards meeting those needs. Community protection: To protect the community by removing the offender from the community thus avoiding the further perpetuation of the offender's criminal acts. Denunciation: To clearly communicate the community's condemnation of the criminal conduct. Reconciliation: To mend the relationship between the offender, the victim and the community. Reintegration: To facilitate the re-entry of the offender into the society.

7. The case has been reviewed in consonant with Section 333(2) of the [CPC](#) and it revealed that the Applicant first appearance was on 12th April 2018. There is no material evidence that he was ever released on bond pursuant to Article 49 of the [Constitution](#). The case was remanded several times without a proper hearing until the negotiation of a plea agreement between the State and the Applicant resulting in the offence of murder being reduced and substituted with that of manslaughter contrary to Section 202 as read with 205 of the [Penal Code](#). The Applicant admitted the facts as laid out in the plea agreement instrument filed in Court on 5th February 2021. The Court in its knowledge and wisdom sentence each of the offenders to a term imprisonment of 10 years. The session judge went further to pronounce herself as follows:
 - a. The Court has considered carefully the terms of the plea agreement, the factual basis thereof and the representation made herein by learned counsel in mitigation on behalf of the accused person. I note too that the accused persons are first offenders who have been in custody since April 2018. Accordingly, considering the circumstances in which the offence was committed. I hereby sentence each of the 2 accused person to imprisonment for a term of 10 years to be served from the date hereof.
8. From this decision the credit period was given to the offenders for the time served in Official Detention prior to conviction and sentence. The language of the Judge is very clear that the sentence so imposed to be served from 12th April 2018. The only error which maybe actionable the same may be not be incorporated to the final committal warrant of prison dated 25th February 2021.
9. For this Court therefore there is nothing to review in so far as the application is concerned. The best that can happen is for the committal of warrants to be amended indicative of the decision of the Judge for the sentence to be served from 12th April 2018 pursuant to Section 333(2) of the [CPC](#).

DELIVERED, DATED AND SIGNED AT ELDORET VIA CTS THIS 4TH MAY 2026

R. NYAKUNDI

JUDGE

