



**Nyaga v Republic (Miscellaneous Criminal Application  
E059 of 2024) [2025] KEHC 7638 (KLR) (30 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7638 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT CHUKA  
MISCELLANEOUS CRIMINAL APPLICATION E059 OF 2024**

**RL KORIR, J**

**MAY 30, 2025**

**BETWEEN**

**MARTIN MURITHI NYAGA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant, Martin Muriithi Nyaga was charged before the Chief Magistrate’s Court Chuka with the offence of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code. He denied the offence and was tried by Hon. Gandani Chief Magistrate. At the conclusion to the trial, he was convicted vide Judgment dated 6<sup>th</sup> February, 2024 and sentenced on 14<sup>th</sup> March, 2024 to serve five (5) years’ imprisonment.
2. The Applicant has now filed an undated homemade also titled petition, a Notice of Motion seeking reduction of sentence. The Application is stated to be brought under Bill of Rights in the Constitution and Section 333 of Criminal Procedure Code.
3. The Application is based on grounds that the Applicant’s fair trial rights were violated and that he was likely to serve excessive sentence if the time he spent in pre-trial custody was not taken into consideration.
4. The Applicant states in his sworn affidavit that he spent six (6) months in pre-trial custody which the trial court did not take into consideration in his sentence.
5. At the hearing of the Application on 24<sup>th</sup> April, 2025, the Applicant made oral submissions in support of his application. He submitted that he was in pre-trial custody for 4 months before he was sentenced. He stated that he was the sole bread winner of his family and his children were now facing hardship including lack of fees owing to his incarceration. He prayed for a non-custodial sentence so as to take care of his family.



6. The Respondents filed submissions dated 28<sup>th</sup> April, 2025. They submitted that the failure of the court specifically state that it had taken into account the period spent in custody did not render the sentence unlawfully or defective. That the sentence of 5 years' imprisonment for manslaughter was lenient and demonstrated that the court had taken into consideration mitigating factors and the period spent in pre-trial custody. The Respondents urged the court to uphold the sentence which they termed a product of leniency and judicial discretion properly exercised.

### **Analysis and Determination**

7. The Application before me seeks revision of sentence. This court's revisionary jurisdiction is provided for under Sections 362-364 of the [Criminal Procedure Code](#).

It state:-

“362. The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.

363.

- (1) A subordinate court of the first class may call for and examine the record of any criminal proceedings of a subordinate court of a lower class than it and established within its local limits of jurisdiction, for the purpose of satisfying itself as to the legality, correctness or propriety of any finding, sentence or order recorded or passed, and as to the regularity of the proceedings.
- (2) If a subordinate court acting under subsection (1) considers that a finding, sentence or order of the court of lower class is illegal or improper, or that the proceedings were irregular, it shall forward the record with its remarks thereon to the High Court.

364.

- (1) In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may -
  - (a) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 354, 357 and 358, and may enhance the sentence;
  - (b) in the case of any other order other than an order of acquittal, alter or reverse the order.
  - (c) in proceedings under section 203 or 296 (2) of the [Penal Code](#), the Prevention of Terrorism Act, the Narcotic Drugs and Psychotropic Substances (Control) Act, the Prevention of Organized Crimes



Act, the Proceeds of Crime and Anti-Money Laundering Act, the Sexual Offences Act and the Counter-Trafficking in Persons Act, where the subordinate court has granted bail to an accused person, and the Director of Public Prosecution has indicated his intention to apply for review of the order of the court, the order of the subordinate court may be stayed for a period not exceeding fourteen days pending the filing of the application for review.

- (2) No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence:

Provided that this subsection shall not apply to an order made where a subordinate court has failed to pass a sentence which it was required to pass under the written law creating the offence concerned.

- (3) Where the sentence dealt with under this section has been passed by a subordinate court, the High Court shall not inflict a greater punishment for the offence which in the opinion of the High Court the accused has committed than might have been inflicted by the court which imposed the sentence.
- (4) Nothing in this section shall be deemed to authorize the High Court to convert a finding of acquittal into one of conviction.
- (5) When an appeal lies from a finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed.”

8. In this case I called or the trial court file which I have perused. From the outset, there was no irregularity as the sentence provided for manslaughter was life-imprisonment.
9. The trial court in sentencing the Applicant stated that the offence was aggravated as the Accused had used a poisoned arrow. The court however noted that the parties were kismen and sentenced the Accused to 5 years’ imprisonment to give him time to reflect on his actions
10. In the mind of this court a five year sentence for the senseless loss of life was lenient by all standards. I am persuaded that through the trial court did not specifically lay down a mathematical formular showing that it had deducted time spent in custody, it was rather obvious from the lenient sentence, that it had done so.
11. I am persuaded that the trial court properly exercised discretion in arriving at the sentence. I am further persuaded that there are no grounds for me to interfere with that discretion. In the case of *Bernard Kimani Gacheru v Republic* [2002] eKLR, the Court of Appeal stated that:-

“It is now settled law, following several authorities by this court and the high Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, the sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with



sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account the wrong material, or acted on the wrong principle. Even if, the appellate court feels that the sentence is heavy and that the appellate court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, anyone of the matters already states is shown to exist.”

12. My perusal of the trial file showed that the Applicant took plea on 18<sup>th</sup> October, 2016 and was admitted to bond on 27<sup>th</sup> October, 2016. It is therefore not true that he was in pre-trial custody for 6 months as he alleges.

13. In the end, I find no merit in the Application. It is dismissed.

Orders accordingly.

**RULING DELIVERED, DATED AND SIGNED AT CHUKA THIS 30<sup>TH</sup> DAY OF MAY, 2025.**

.....

**R. LAGAT-KORIR**

**JUDGE**

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

