



Musiebe alias Jackson Ngonya v Republic (Criminal Miscellaneous Application E025 of 2024) [2025] KEHC 9109 (KLR) (24 June 2025) (Ruling)

Neutral citation: [2025] KEHC 9109 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CRIMINAL MISCELLANEOUS APPLICATION E025 OF 2024**

JN KAMAU, J

JUNE 24, 2025

BETWEEN

AMOS MUSIEBE ALIAS JACKSON NGONYA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant herein was charged with the offence of murder contrary to Section 203 as read with 204 of the *Penal Code*. Njagi J convicted him on 31st July 2019 and sentenced him to death.
2. His application for sentence review was heard by Musyoka J. He found that he could benefit to a custodial sentence and meted on him twenty-five (25) years imprisonment.
3. On 30th January 2024, he filed Notice of Motion application herein dated 25th January 2024 seeking review of sentence. He averred that this was a family matter and that he regretted not having tamed his anger which caused the death of his wife.
4. He pointed out that he had a right to mitigate under Section 216 and 329 of the *Criminal Procedure Code* which he urged the court to consider during his sentence review. He asserted that he had spent six (6) years in custody since the day of his arrest.
5. His Written Submissions were dated 27th November 2024 and filed on 28th November 2024 while those of the Respondent were dated 21st November 2024 and filed on 22nd November 2024. This Ruling is therefore based on the said Written Submissions which both parties relied upon in their entirety.

Legal Analysis

6. Right at the outset, this court wished to state that the court file and the typed proceedings herein had not been availed as this court had directed on 27th June 2024. To expedite the matter and make



- a determination herein, this court took the initiative to obtain decisions that had been delivered by previous judges who had handled the said matter.
7. The Applicant submitted that the main objective of conviction and sentencing was retribution, deterrence, community protection but that the change aspect of the accused person together with restorative justice were factors that must not be ignored. He argued that the change was not pegged on a specified duration.
 8. He referred this court to Section 26(2) of the Penal Code, Article 50(2)(p)(q) and 165(3) of the Constitution of Kenya, 2010 and urged this court to exercise its jurisdiction to reduce his sentence. He asserted that he was the sole breadwinner of his family of two (2) children who were being taken care of by his aged aunt. He sought for a second chance in life to salvage the future of his children which stood ruined if his sentence remained fixed and unreviewed.
 9. He submitted that he was a first offender and remorseful of the events that led to the death of his beloved wife. He urged the court to consider his prospect of rehabilitation, reformation and transformation as of value and worthy of awarding him a reduction in sentence. In this regard, he relied on the case of Henry Katap Kipkeu v Republic Miscellaneous Application No 37 of 2018 (eKLR citation not given) where the court observed that the applicant therein had acquired skills which would enable him be re-adapted in the society.
 10. He pleaded with the court to reduce his sentence to five (5) years imprisonment or to consider meting out on him a non-custodial sentence. He further cited Section 333(2) and 361(1)(I)(a) of the Criminal Procedure Code and Section 38 of the Penal Code and Article 165(3) and 19(2) of the Constitution of Kenya and urged this court to consider the period he spent in custody during trial.
 11. Right from the onset, this court noted that the Respondent's submissions referred to wrong information which was not related to the Applicant's case herein. In the premises, it disregarded the said submissions as it did not know which part of the submissions to consider. It called upon the Respondent to be keen while submitting to avoid causing confusion to the court.
 12. Notably, the Applicant herein was convicted of the offence of murder in Kakamega HCCRC 26 of 2018. In his decision of 3rd June 2021, Musyoka J considered the decision in Francis Karioko Muruatetu & another v Republic [2017]eKLR in respect to mandatory sentences and especially the death penalty and acknowledged that pursuant to the said decision, courts were allowed to consider other modes of punishment. In the premises, he re-sentenced the Applicant herein to twenty-five (25) years imprisonment. The said Learned Judge also noted that the Applicant herein mitigated on 18th September 2019 before he was sentenced.
 13. As this court was of equal status to that of Musyoka J, it could not sit on appeal of his decision. If the Applicant was dissatisfied with his decision, the only option that he had was to appeal his decision at the Court of Appeal.
 14. As this court did not manage to get the proceedings to determine if Musyoka J took into account the period the Applicant had spent in remand before he was sentenced, it was unable to pronounce itself on that issue.

Disposition

15. For the foregoing reasons, the upshot of this court's decision was that the Applicant's Notice of Motion application dated 25th January 2024 and filed on 30th January 2024 was not merited and the same be and is hereby dismissed.



16. The Applicant is at liberty to move the court pursuant to Section 333(2) of the *Criminal Procedure Code* Cap 75 (Laws of Kenya) once the court file herein and/or typed proceedings are availed.
17. The DR High Court Vihiga be and is hereby directed to liaise with the DR High Court Kakamega to obtain the proceedings in Cr Case No 26 of 2018 Amos Musiebe Alias Jackson Ngonya v Republic and Cr Case No 21 of 2021 Republic v Amos Musiebe Alias Jackson Ngonya. Indeed, Musyoka J had directed that the file be returned to High Court Vihiga when he finalised hearing the sentence review of the Applicant's application.
18. It is hereby directed that this matter be mentioned on 9th October 2025 with a view to ascertaining if the said documentation will have been availed to this court for further orders and/or directions.
19. It is so ordered.

DATED AND DELIVERED AT VIHIGA THIS 24TH DAY OF JUNE 2025

J. KAMAU

JUDGE

