



**Omurunga v Republic (Miscellaneous Criminal Application  
E004 of 2022) [2025] KEHC 12029 (KLR) (Crim) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 12029 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
MISCELLANEOUS CRIMINAL APPLICATION E004 OF 2022  
AM MUTETI, J  
JULY 31, 2025  
IN THE MATTER OF HCCR 111/2014 NAIROBI  
AND  
IN THE MATTER OF CRA 156/2019**

**BETWEEN**

**EVANS OMURUNGA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant in this matter was charged with the offence of murder contrary to Section 203 as read with 204 of the Penal Code. He was tried, convicted and sentenced to suffer death as by law provided. The sentence was later commuted to life imprisonment and he now seeks that this court reviews the sentence.
2. The applicant had filed Criminal Appeal No. 156 of 2019 Evans Omurunga Vs Republic before the court of Appeal which matter he withdrew on the 5<sup>th</sup> of October 2021 and has now moved this court to consider a resentencing in line with the Supreme Court decision in Muruatetu & Another Vs Republic Petition No. 15 and 16 of 2015 (2021) KESC 31 [KLR] in which the Supreme Court guided that persons who had been charged with murder and were sentenced to mandatory death sentence could petition the High court for resentencing. However, as a pre-condition such an application for resentencing would only be entertained upon satisfying the High court that the appeal before the court of appeal had been withdrawn.



3. The applicant has indicated to this court that he withdrew his appeal and is thus eligible for resentencing. Ms Odembo counsel for the applicant argued that the applicant was remorseful for his actions and seeks leniency of the court.
4. The applicant has also told the court that the deceased's family has since forgiven him and the two families are not opposed to a review of his sentence thus this court should be minded to review the sentence and consider granting him a non- custodial sentence.
5. This court called for a pre-sentencing report which was filed on the 29<sup>th</sup> May 2025 and in it the probation officer Mr. Kiriga Kimani recommended that the offender is suitable for non-custodial sentence. In brief , the circumstances of the offence are that:

“The offender is the husband to the deceased. He accepts committing the offence and acknowledges the facts as a true recollection of what transpired. He attributes the committal of the offence as a result of drunkenness. He narrated that on the material day, he asked for food from the deceased and they had a disagreement and thus he committed the offence. She was pronounced dead on arrival at a nearby dispensary. He has however been remorseful thereafter seeking penance for his actions.”

6. The probation Officer states:

“The offender was the husband to the primary victim in this matter. At

the time of his arrest he was residing in Masimba, Kayole with the deceased and their children. The offender expressed intense remorse for his actions, seeking the Court's leniency when exercising its discretion. He is hopeful of continuing with his life on a clean slate. Both the family and community report are affirmative citing that he is a person of good bearing based and no criminal transcripts were established. The family is willing to take part in his rehabilitation and reintegration. The family of the deceased stated that that family members from the accused side have sought for forgiveness and reconciliation them. They are in talking terms. Based on the factors surrounding the offence, the offender is suitable for a non- custodial sentence.

While in prison he has been engaged in apple farming, soap making, computer packages and religious studies.

This inquiry has established that the accused does not have any criminal inclinations as his personal conduct is not that of a habitual offender.

The views of the secondary victims were captured and it was observed that the family is pained at the loss of their loved one. They have been affected emotionally, socially and financially but there are no possibilities of retaliation. They leave the decision to the discretion of this honorable court.

The offender was put through a scientific tool assessing the degree of future recidivism and he has been assessed as a medium risk offender having already served 11 years of his life sentence.

I find that the offender requires interventions on anger management, conflict resolution, negative peers, drugs and substance abuse, effects of poor social background and affirmative decision making.



These will be addressed through virtue modelling and cognitive distancing through therapy, counselling on drugs and substance abuse, guiding the offender on developing moral reasoning, keeping positive peers and aiding the offender in observing social norms.

7. The court has considered the pre-sentence report and the period that the applicant has so far spent in custody. It is clear that the society is ready to receive him and it would appear he has since undergone some form of rehabilitation while in prison. The court appreciates that even if the applicant was to spend his entire life in prison that would not bring back the deceased's life.
8. According to the applicant, he has been in custody since 2014 and to date he has spent well over 10 years behind bars.
9. Taking into account the totality of the circumstances of this case and the favorable report by the probation officer, this court is minded to re-sentence the applicant to a period of 15 years imprisonment to be computed from the date of his arrest.
10. It is so ordered.

**DATED, SIGNED and DELIVERED VIRTUALLY at NAIROBI this 31<sup>st</sup> day of JULY 2025.**

**A. M. MUTETI**

**JUDGE**

In the presence of:

Court Assistant: Kiptoo

Ms Odemba for the Applicant

Ms Njoroge for Respondent

