

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
MISC CRIMINAL APPLICATION NO E005 OF 2025

BERNARD MUTENYO CHEMAU
APPLICANT
VERSUS

REPUBLIC.....
.....RESPONDENT

Coram: Justice R. Nyakundi

M/s Sidi for the State

RULING

1. What is pending before this court for determination is a Notice of Motion Application dated 3rd day of January 2025 where the Applicant is seeking the following orders:
 - a) That the applicant is seeking for sentence review in accordance to Article 50(2) (p) (q) of the constitution of Kenya 2010.
 - b) That the applicant is seeking to be placed under probation for the remaining part of sentence
 - c) That section 4(1) (a)(b) of the probation offenders act 64 law of Kenya.
2. The Application is supported by the mitigating grounds which can be summarized as follows as stated by the Applicant;
 - a) *That, I am a first offender and thus beg for leniency.*
 - b) *That I am remorseful, repentant and reformed as I have learned to take responsibility of my own actions.*
 - c) *That, the sentence meted upon me was harsh considering the mitigating factors.*
 - d) *That may this honorable court be pleased to consider the sentencing policy of 2016 published by the Kenya judiciary and*

establish the mitigating circumstances that would lessen the custodial sentence.

e) That, I am praying to be admitted to non-custodial sentence for the remaining part of sentence.

f) That more grounds to be adduced at hearing there-of and determination of this application.

3. The Application is supported by the annexed affidavit sworn by the Applicant who deponed as follows;

a) That, I am Kenyan male citizen of sound mind hence competent to swear this affidavit.

b) That, I was charged with offence of murder contrary to section 203 as read with 204 of the Penal code convicted and sentenced to 20 years' imprisonment at Eldoret high court.

c) That, I am remorseful, repentant, reformed and rehabilitated, as I have learned hard lessons while in custody and now beg for leniency

d) That, I am a young man with a young family who solely depends on me.

e) That, I do beg that I be accorded to benefit with the provision of Article 50(2) (q) of the Constitution of Kenya 2010.

f) That, during my time in prison I have been able to go through various Theological and Social programmes with certificates which I shall tender at hearing there- of.

g) That it's my humble prayer that I be granted a fair opportunity to argue my application.

Analysis and Determination

4. The applicant has filed in the matter fundamental rights and freedoms as under Art 27, 28, 29, & 48 of the constitution of Kenya 2010. An aspect

that is close to the person of the offender is his blame-worthiness or culpability in committing the crime. The determination of the blameworthiness of an offender is the harm his or her wrongdoing inflicts. It is therefore useful in determining an appropriate sentence to establish how blameworthy the offender is. The modern view of the seriousness of the offence also has to do with the blameworthiness of the offender. The gravity of the crime is affected by the extent to which the offender is blamed or held accountable for the harm caused or risked by the offence. A typical example is the youth of the offender. Which reduce or diminish criminal capacity are a provocation, as much as a source of stress, and can be the cause of certain forms of mental illness.

5. This sentence being complained of was imposed with five objectives in mind:
 - a. *Act as a general deterrent.*
 - b. *Serve as a deterrent.*
 - c. *Enable the possibility of correction.*
 - d. *Protect society.*
 - e. *Serve society's desire for retribution*
6. In summary the applicant's application lacks merit and the same is dismissed under section 382 of the Criminal Procedure Code.

**DATED, SIGNED AND DELIVERED VIA CTS AT ELDORET THIS 13TH
AUGUST 2025**

.....

**R. NYAKUNDI
JUDGE**