



**Kirwa v Republic (Miscellaneous Criminal Application
E045 of 2024) [2025] KEHC 11797 (KLR) (7 August 2025) (Ruling)**

Neutral citation: [2025] KEHC 11797 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS CRIMINAL APPLICATION E045 OF 2024
RN NYAKUNDI, J
AUGUST 7, 2025**

BETWEEN

JOSEPHAT KIPKOECH KIRWA PETITIONER

AND

REPUBLIC RESPONDENT

RULING

1. Before this court for determination is an application dated on 29th April 2024 in which the Petitioner/Applicant is seeking the following orders:
 - a. That I am seeking orders for review of sentence under section 362, 364(1) and 165 of the CPC in reliance with Article 27(1)(2)(4), 28, 22(1), 25(c), 50(1)(2) and 51(1)(2) of the Constitution of Kenya.
 - b. That may this Honourable Court be pleased to consider the provisions of the Sentencing Policy Guidelines 2016 published by the Kenya Judiciary and invoke provisions of Article 165(3) a, b, d & 258(1) of the Constitution of Kenya 2010 and reduce the sentence to a determinate term of sentence.
2. The Application is made on the following mitigation grounds:
 - a. That the petitioner is seeking for sentence review in accordance to Art 50(2)(p)(q) and section 362 & 364 of the constitution of Kenya 2010.
 - b. That this matter is certified as urgent and be heard at the first instance
 - c. That the applicant will be seeking a declaration by the court that his application has merits and qualifies to be heard.



3. The Application is supported by the annexed affidavit sworn by Josephat Kipkoech Kirwa who avers as follows;
- a. That, I was charged with the offence of murder c/sec 203 as read with 204 of the penal code and sentenced to death.
 - b. That, I appealed to the court of appeal at Eldoret vide 23 OF 2018 and the same was dismissed in entirety.
 - c. That, I filed petition No. 184 of 2021 at Eldoret and the death sentence was reduced to 35 years by Justice Nyakundi at Eldoret High Court
 - d. That, I am now approaching this honorable court to kindly review my 35 years sentence to a lesser and more lenient sentence.
 - e. That, I have no other application in the court of appeal, hence this application.
 - f. That, I will abide by the laws and rules for non-custodial sentences.
 - g. That, this Hon. Court has competent, unlimited jurisdiction to hear and determine this application under the provisions of article 165(3) (b) of the constitution of Kenya 2010.
 - h. That, I am remorseful, repentant, reformed and rehabilitated, as I have learned hard lessons while in custody and now beg for leniency.
 - i. That, I have young family with school going children who solely depend on me for their basic needs and education
 - j. That, I do beg that I be accorded to benefit with the provision of Article 50(2) (q) of the Constitution of Kenya 2010.
 - k. That it's my humble prayer that I be granted a fair opportunity to argue my petition.

Decision

4. I have read and considered the application, the grounds and the affidavit in support of the application. There is one issue of determination; whether the application herein is merited.
5. The applicant was tried, found guilty and sentenced to suffer death which sentence was commuted to life imprisonment. On 17th October 2023 the sentence was reviewed and substituted with a terminable period of 35 years in prison custody. His latest application does not meet the threshold under Art 50(2) (p) (q) and (6) (a) (b) of the constitution. These provisions are also to be construed with section 362 & 364 of the CPC. The upshot of it is that there exist no compelling or substantial circumstances for a new trial on sentence to be re-opened by this court. The application is dismissed under section 382 of the CPC.

DATED, SIGNED AND DELIVERED VIA CTS AT ELDORET THIS 7TH AUGUST 2025

.....

R. NYAKUNDI

JUDGE

