



**Omao v Republic (Criminal Revision E004 of 2024)
[2024] KEHC 13902 (KLR) (31 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13902 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
CRIMINAL REVISION E004 OF 2024
WA OKWANY, J
OCTOBER 31, 2024**

BETWEEN

KEVIN ARIS OMAO APPLICANT

AND

REPUBLIC RESPONDENT

(From the original conviction and sentence at the Chief Magistrate's Court in Nyamira, Criminal Case No. 227 of 2021 by Hon. M.C. Nyigei, Principal Magistrate on 27th September 2022)

RULING

1. The Applicant was convicted on two counts for the offence of robbery with violence contrary to Section 296 (2) of the Penal Code. He was sentenced to serve ten (10) years imprisonment on each count with a rider that the sentences were to run concurrently.
2. The Applicant now seeks a review of the sentence on the grounds that he is remorseful his actions. He urged the Court to consider reducing his sentence or quash the same on the basis that he has reformed following his rehabilitation while in prison.
3. Counsel for the Respondent opposed the Application while arguing that the sentence was not harsh. Counsel noted that the Applicant skipped bail for six (6) months during the trial and was only re-arrested through the help of his sureties.
4. The rights of an accused person are spelt out under Article 50 of *the Constitution* which provides as follows: -
 2. Every accused person has the right to a fair trial, which included the right-
 - q. if convicted, to appeal to, or to apply for review by a higher court as prescribed by law.



5. The High Court is vested with revisionary jurisdiction under Article 165 of *the Constitution* which provides as follows: -

Article 165

1. The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial, or quasi-judicial function, but not over a superior court.
6. The courts revisionary powers are further encapsulated in the Criminal Procedure Code under Section 362 while Section 364 thereof outlines the manner in which the powers are to be exercised as follows: -

Criminal Procedure Code

362. Power of the High Court to Call for Records

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.

364. Powers of the High Court on Revision

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.
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 defense:

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 that 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 a 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.



7. It is the duty of this Court to examine the sentence imposed by the trial court in order to satisfy itself on the parameters of legality, correctness and appropriateness. The main issue for determination is whether the sentence of 10 years imprisonment ought to be revised to a lesser period.
8. It is trite that sentencing is at the trial court's discretion which discretion cannot be interfered with except under the conditions that were stated in *Bernard Kimani Gacheru vs. Republic* [2002] eKLR where the Court of Appeal held thus: -

It is now settled law, following several authorities by this court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, 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 some wrong material, or acted on a 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 stated is shown to exist.

9. This Court can therefore only interfere with the sentence passed by the trial court where it is established that the sentence was manifestly harsh or inadequate, or where it is illegal or where the trial court did not consider some relevant factor. In *Wagude v. R* (1983) KLR 569 (Kneller, Hancox JJA. & Chesoni, Ag. JA.) the Court of Appeal held in this regard thus: -

“The Court may interfere with the sentence only if it shown that it was manifestly excessive. In this instance two years’ Imprisonment for stealing by a person employed in the public service was not manifestly excessive.”

(See also the decision of Lewis J. in *R vs. Ratilal Amarshi Lakhani* [1958] EA 140, 141)

10. Section 296(2) of the Penal Code provides for a death sentence for the offence of robbery with violence. The section stipulates thus:-
 2. If the offender is armed with any dangerous or offensive weapon or instrument, or is in company with one or more other person or persons, or is, at or immediately before or immediately after the time of the robbery he wound, beats, strikes or uses any other personal violence to any person, he shall be sentenced to death.”
11. I have considered the sentence that the trial court imposed on the Applicant herein and find that it was legal, adequate and appropriate. I note that the trial court stated that the sentences for the two counts were to run concurrently. I find no reason to interfere with the trial's court exercise of discretion in this regard.
12. In sum, I find that the instant Application lacks merit and I therefore dismiss it.
13. Orders accordingly.

DATED AND DELIVERED AT NYAMIRA ON THIS 31ST DAY OF OCTOBER 2024.

W. A. OKWANY

JUDGE

