



REPUBLIC OF KENYA



**KENYA LAW**  
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**Akwale v Republic (Criminal Revision E006 of 2022)  
[2022] KEHC 10459 (KLR) (24 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 10459 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CRIMINAL REVISION E006 OF 2022  
WM MUSYOKA, J  
JUNE 24, 2022**

**BETWEEN**

**JAMES WESONGA AKHWALE ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Revision arising from conviction and sentence by Hon. F Makoyo, Principal Magistrate, of 15th November 2021, in Butere PMCTRC No. E025 OF 2021)*

**RULING**

1. The revision herein is initiated by a letter dated 4<sup>th</sup> December 2012, which I believe should read 4<sup>th</sup> December 2021. The applicant had been convicted on 1<sup>st</sup> December 2021, in Butere PMCTRC No. E025 of 2021, and sentenced to seven years imprisonment. He would like a review of that sentence.
2. Revision, under section 362 of the *Criminal Procedure Code*, Cap 75, Laws of Kenya, gives the High Court discretion to revise orders or findings or decisions or sentences of the trial court on the basis of incorrectness or illegality or impropriety or irregularity.
3. In this case, the applicant has not cited any incorrectness or illegality or impropriety or irregularity in the sentence that was pronounced by the court or in the proceedings that the court conducted in Butere PMCTRC No. E025 of 2021, so that I can invoke section 362 of the Criminal Procedure Code in his favour. It is not submitted that the sentence was incorrect or illegal or improper or irregular. I have not seen anything irregular or improper or illegal or incorrect about the sentence.
4. If it is about harshness of the sentence, the trial court has discretion, and where a party is unhappy about how discretion has been exercised, he should appeal against the decision, but not seek revision, unless it can be demonstrated that there was incorrectness or irregularity or impropriety or illegality. The applicant herein should have appealed against the sentence.



5. I have gone through the record. This was a case of causing death by dangerous driving, contrary to section 46 of the [Traffic Act](#), Cap 403, Laws of Kenya, which is a serious offence, given that it is a form of manslaughter. Under the [Traffic Act](#), the penalty is imprisonment for up to ten years. The ultimate penalty for manslaughter is life imprisonment, under section 205 of the Penal Code, Cap 63, Laws of Kenya. The applicant accepted the particulars of facts that were read out to him by the trial court, that he fled after the accident on 3<sup>rd</sup> September 2020 and was not apprehended until 13<sup>th</sup> November 2021. He disappeared after the accident and was in hiding for over a year. Such conduct cannot attract a non-custodial sentence, and calls for a deterrent sentence instead. Failing to stop after an accident or to report an accident is an offence in itself. See sections 73 and 75 of the [Traffic Act](#).
6. The revision application has no merit, and I hereby dismiss the same. Copies of this ruling to be availed to the applicant and the Office of the Director of Public Prosecutions.

**DELIVERED, DATED AND SIGNED AT KAKAMEGA ON THIS 24<sup>th</sup> DAY OF June 2022**

**WM MUSYOKA**

**JUDGE**

Erick Zalo, Court Assistant.

James Wesonga Akhwale, the applicant, in person.

Mr. Mwangi, instructed by the Director of Public Prosecutions, for the respondent.

