



**Kangethe v Republic (Criminal Revision E124 of 2022)  
[2022] KEHC 15872 (KLR) (17 November 2022) (Ruling)**

Neutral citation: [2022] KEHC 15872 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIVASHA  
CRIMINAL REVISION E124 OF 2022  
GL NZIOKA, J  
NOVEMBER 17, 2022**

**BETWEEN**

**JAMES MBUGUA KANGETHE ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant was arraigned before the Chief Magistrate's Court at Naivasha charged *vide* Criminal Case No E676 of 2022, with the offence of; threatening to kill contrary to; section 223 (1) of the [Penal Code](#). The particulars of the charge are as per the charge sheet.
2. He pleaded guilty and was convicted on his own plea of guilty and was sentenced three (3) years imprisonment. However, he seeks for sentence review based on the notice of motion application filed in court on; August 25, 2022, in which he prays that, the custodial sentence in question, be reduced and/or converted to a non-custodial sentence.
3. He relies on the memorandum of sentence review in which he states in the mitigating grounds as follows;-
  - a. That, I am a first offender.
  - b. That, I pray that this honourable court allow me to spend the remaining period of my sentence under community service order (CSO) or set me at liberty.
  - c. That, I am remorseful of my offence and I have learnt to be a law-abiding citizen.
  - d. That, I am from a poor family background.



- e. That, I did not give proper mitigation during my sentencing and hence would like to present during the hearing and determination of this application.
  - f. That, I am the sole breadwinner of my family and my incarceration has placed them in a very difficult situation.
  - g. That, I humbly beg this honourable court for leniency and reduce my three (3) year sentence.
  - h. That, I am not appealing against sentence and conviction but applying for a review of sentence.
4. The respondent did not file any response to the application despite being accorded an opportunity to do so. However, having considered the application, I note that, it was filed as revision application. The law that, governs revisionary power of the High court is provided for under; sections 362 of the [Criminal Procedure Code](#) which states as follows:
- “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.” (Emphasis added).
5. The aforesaid provisions are supported by the provisions of; section 364 of the [Criminal Procedure Code](#) which states that: -
- (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 defence: 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 than 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, 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.”
6. It is clear from the above provisions that, the court will only exercise its revisionary powers where, the impugned sentence is either incorrect, illegal or improper. The objective of revisionary jurisdiction is to set right a patent defect or error of jurisdiction or law. This jurisdiction will only be involved where the decision under challenge is; grossly onerous, there is no compliance with the provisions of the law, or the finding re-ordered are based on no evidence, or material evidence is ignored or judicial discretion is exercised arbitrarily or perversely.
7. In the instant matter, the applicant was convicted of an offence under section 223 (1) of the Penal Code, which states as follows:-
- “Any person who without lawful excuse utters, or directly or indirectly causes any person to receive, a threat, whether in writing or not, to kill any person is guilty of a felony and is liable to imprisonment for ten years”
8. Pursuant to the aforesaid, the sentence meted in the present case of an imprisonment term of three (3) years is lawful, legal, proper and correct and therefore does not fall under the purview of revisionary power of the court and to that extent, the application fails.
9. It is so ordered

**DATED, DELIVERED VIRTUALLY, AND SIGNED ON THIS 17<sup>TH</sup> DAY OF NOVEMBER, 2022**

**GRACE L NZIOKA**

**JUDGE**

In the presence of;

Applicant in person

Ms Maingi for the respondent

Ms Ogutu court assistant

