



**Chakaya v Republic (Criminal Revision E002 of 2024)  
[2025] KEHC 133 (KLR) (17 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 133 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MALINDI  
CRIMINAL REVISION E002 OF 2024  
M THANDE, J  
JANUARY 17, 2025**

**BETWEEN**

**ALI CHAKAYA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant was in *Mariakani Criminal Case No. E379 of 2022* convicted of the offence of grievous harm contrary to Section 234 of the [Penal Code](#) and sentenced to 2 years imprisonment.
2. By an Application dated 3.1.24 brought under Section 3(1) as read with Section 4(1) of the [Community Service Orders Act](#), the Applicant seeks an order that he serves the remainder of his sentence doing community service. He claims that he is epileptic and subject to constant episodes. Further that his medical condition has worsened thus exposing him to high risk of epileptic seizures in prison thus endangering his life and general well-being. He further stated that he is a first offender, remorseful and desires to make amends. He undertook to comply with the legal requirements under the Act once the order sought is granted.
3. The Respondent opposed the Application vide grounds of opposition dated 6.5.24. The grounds are that the sentence imposed upon the Applicant was determined by the trial court as a matter of fact and that this Court does not have jurisdiction to review the same through the Application; that the material placed before this Court was placed before the trial court which took into account his mitigation in determining sentence; that this Court lacks jurisdiction to review the sentence through the present Application; that litigation must come to an end; that the Application ought to be dismissed as it is bad in law, an abuse of the court process and devoid of merit.
4. Under the [Community Service Orders Act](#), courts have the power to make community service orders requiring offenders to perform community service. The provision further stipulates the circumstances



under which a community service order may be made and the conditions that may be imposed. Section 3(1) cited by the Applicant, provides as follows:

Where any person is convicted of an offence punishable with—

- a. imprisonment for a term not exceeding three years, with or without the option of a fine; or
  - b. imprisonment for a term exceeding three years but for which the court determines a term of imprisonment for three years or less, with or without the option of a fine, to be appropriate,
- the court may, subject to this Act, make a community service order requiring the offender to perform community service.
5. Section 4(1) also relied upon by the Applicant Stipulates the obligations of person subject to community service order.
  6. Flowing from the above provision, it is clear that where a court convicts a person of an offence punishable with a term not exceeding 3 years of imprisonment with or without the option of a fine, such court may make an order requiring such person performs community service. This provision also applies to an offender convicted of a crime the punishment of which exceeds 3 years imprisonment but the court determines a sentence of 3 years or less is appropriate.
  7. A clear reading of the above provision thus makes it clear that the power to grant probation orders can only be exercised by the court at sentencing, upon conviction. Such order is discretionary and the Court must, in its discretion, determines that a community service order should be made.
  8. The circumstances herein are that the Applicant was convicted and sentenced by the court below. Had that court been of the view that it was expedient to make a community service requiring the Applicant to perform community service instead of sentencing him to 2 years imprisonment, it would have done so. Evidently, the Court did not form such opinion.
  9. It is trite that Court may only exercise that jurisdiction which has been conferred upon it by the Constitution, statute or both. In the case of Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others [2012] eKLR the Supreme Court succinctly stated:

A Court's jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.
  10. This Court derives its jurisdiction principally form Article 165(3) of the Constitution which confers upon this Court unlimited original jurisdiction in criminal and civil matters, the provision clearly delineates and demarcates what the Court can and cannot do. The jurisdiction of this Court includes supervisory powers as provided for under Article 165(6) as follows:

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.
  11. The Constitution has conferred upon this Court supervisory jurisdiction over subordinate courts. Article 165(6) and (7) provides as follows:
    - (6) 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.



- (7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice
12. In exercise of its supervisory jurisdiction, this Court is empowered to call for the record of proceedings in such subordinate courts, and make and give appropriate orders and directions as it deems necessary to ensure the fair administration of justice.
13. To give effect to this provision with regard to criminal matters, the *Criminal Procedure Code* elaborates the purpose of calling for the record of proceedings in subordinate courts by this Court, which is to satisfy itself as to the correctness, legality or propriety of any finding or order. Section 362 of the *Criminal Procedure Code* provides:
- 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.
14. Where the Court finds after examining the record of proceedings before a subordinate court that the same are wanting in correctness of that there is illegality or impropriety of a finding, order or sentence, the Court may by dint of the revision powers conferred upon it by Section 364 enhance the sentence or alter or reverse the order except that of an acquittal.
15. Section 364(5) is explicit that 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.
16. Section 347 of the *Criminal Procedure Code* provides that a person convicted on a trial held by a subordinate court may appeal to the High Court. Our courts have repeatedly stated in many cases, that where a clear procedure for redress is prescribed by the Constitution or a statute, that procedure should be strictly followed. One such case is Speaker of the *National Assembly v James Njenga Karume* [1992] eKLR where the Court of Appeal stated:
- In our view, there is considerable merit in the submission that where there is a clear procedure for the redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed.
17. The Applicant has not demonstrated that the sentence imposed upon him is illegal. In the premises the orders sought cannot be granted by this Court sitting as a revision court. Flowing from the above stated provisions of the law and the authority cited, the Applicant's redress lies with the appellate court. It is in the exercise of its appellate jurisdiction that this Court can examine the record and look at the sentence complained about and make a decision thereon.
18. In light of the foregoing, the Application dated 3.1.24, being devoid of merit, is hereby dismissed.

**DATED, SIGNED AND DELIVERED IN MALINDI THIS 17<sup>TH</sup> DAY OF JANUARY 2025**

**M. THANDE**

**JUDGE**

