



**Kabui v Republic (Criminal Revision E114 of 2024)
[2025] KEHC 2882 (KLR) (13 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 2882 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDAMA RAVINE
CRIMINAL REVISION E114 OF 2024**

**RB NGETICH, J
MARCH 13, 2025**

BETWEEN

WILSON KAHIGA KABUI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The accused Wilson Kahiga Kabui was charged with 9 counts of traffic offences. Count I is the offence of Causing death by dangerous driving contrary to section 46 of the Traffic Act Cap 403 Laws of Kenya. The particulars of the charge were that the applicant on the 14th day of November, 2020 at about 6:30a.m, at Map area along Eldoret – Nakuru Road in Koibatek sub-county within Baringo County, being the driver of motor vehicle Registration No KAU XXXL Mitsubishi Fuso, drove the said motor vehicle in the said public road, recklessly and at a speed and in a manner which was dangerous to the public, having regard to all circumstances of the case, including nature, condition, and use of the road the amount of traffic which is actually at the time on the road and caused an accident by hitting No 93048 PC (W) Ashuu Omar a police officer who was performing traffic duties along the said road and as a result, he died on the spot.
2. Count II is the offence of Causing death by dangerous driving contrary to section 46 of the Traffic Act Cap 403 Laws of Kenya. The particulars of the charge were that the applicant on the 14th day of November, 2020 at about 6:30a.m, at Map area along Eldoret – Nakuru Road in Koibatek sub-county within Baringo County, being the driver of motor vehicle Registration No KAU XXXL Mitsubishi Fuso, drove the said motor vehicle in the said public road, recklessly and at a speed and in a manner which was dangerous to the public, having regard to all circumstances of the case, including nature, condition, and use of the road the amount of traffic which is actually at the time on the road and caused an accident by hitting motor vehicle registration No KAY XXXJ Honda CRV thereby causing the



- death of Wayne Adachira aged one year, three months who was a passenger in the said motor vehicle Registration No KAY XXXJ Honda CRV who died while undergoing treatment.
3. Count III is the offence of Reckless driving contrary to section 47(1) of the [Traffic Act](#) Cap 403 Laws of Kenya. The particulars of the charge were that the applicant on the 14th day of November, 2020 at about 6:30a.m, at Map area along Eldoret – Nakuru Road in Koibatek sub-county within Baringo County, being the driver of motor vehicle Registration No KAU XXXL Mitsubishi Fuso, drove the said motor vehicle in the said public road, recklessly and at a speed and in a manner which was dangerous to the public, having regard to all circumstances of the case, including nature, condition, and use of the road the amount of traffic which is actually at the time on the road and caused an accident by ramming onto the layer of motor vehicle Registration No KAY XXXJ Make Honda CRV and as a result one Joshua Otolu aged 30 years who was a passenger in a motor vehicle Registration No KAY XXXJ Honda CRV sustained injuries.
 4. Count IV is the offence of Reckless driving contrary to section 47(1) of the [Traffic Act](#) Cap 403 Laws of Kenya. The particulars of the charge were that the applicant on the 14th day of November, 2020 at about 6:30a.m, at Map area along Eldoret – Nakuru Road in Koibatek sub-county within Baringo County, being the driver of motor vehicle Registration No KAU XXXL Mitsubishi Fuso, drove the said motor vehicle in the said public road, recklessly and at a speed and in a manner which was dangerous to the public, having regard to all circumstances of the case, including nature, condition, and use of the road the amount of traffic which is actually at the time on the road and caused an accident by ramming onto the layer of motor vehicle Registration No KAY XXXJ Make Honda CRV and as a result one Emmanuel Amusoso aged 42 years who was a passenger in a motor vehicle Registration No KAY XXXJ Honda CRV sustained injuries.
 5. Count V is the offence of Reckless driving contrary to section 47(1) of the [Traffic Act](#) Cap 403 Laws of Kenya. The particulars of the charge were that the applicant on the 14th day of November, 2020 at about 6:30a.m, at Map area along Eldoret – Nakuru Road in Koibatek sub-county within Baringo County, being the driver of motor vehicle Registration No KAU XXXL Mitsubishi Fuso, drove the said motor vehicle in the said public road, recklessly and at a speed and in a manner which was dangerous to the public, having regard to all circumstances of the case, including nature, condition, and use of the road the amount of traffic which is actually at the time on the road and caused an accident by ramming onto the layer of motor vehicle Registration No KAY XXXJ Make Honda CRV and as a result one Amos Amboso aged 38 years who was a passenger in a motor vehicle Registration No KAY XXXJ Honda CRV sustained injuries.
 6. Count VI is the offence of Reckless driving contrary to section 47(1) of the [Traffic Act](#) Cap 403 Laws of Kenya. The particulars of the charge were that the applicant on the 14th day of November, 2020 at about 6:30a.m, at Map area along Eldoret – Nakuru Road in Koibatek sub-county within Baringo County, being the driver of motor vehicle Registration No KAU XXXL Mitsubishi Fuso, drove the said motor vehicle in the said public road, recklessly and at a speed and in a manner which was dangerous to the public, having regard to all circumstances of the case, including nature, condition, and use of the road the amount of traffic which is actually at the time on the road and caused an accident by ramming onto the layer of motor vehicle Registration No KAY XXXJ Make Honda CRV and as a result one Daniel Misaba aged 40 years who was a passenger in a motor vehicle Registration No KAY XXXJ Honda CRV sustained injuries.
 7. Count VII is the offence of Reckless driving contrary to section 47(1) of the [Traffic Act](#) Cap 403 Laws of Kenya. The particulars of the charge were that the applicant on the 14th day of November, 2020 at about 6:30a.m, at Map area along Eldoret – Nakuru Road in Koibatek sub-county within Baringo County,



being the driver of motor vehicle Registration No KAU XXXL Mitsubishi Fuso, drove the said motor vehicle in the said public road, recklessly and at a speed and in a manner which was dangerous to the public, having regard to all circumstances of the case, including nature, condition, and use of the road the amount of traffic which is actually at the time on the road and caused an accident by ramming onto the layer of motor vehicle Registration No KAY XXXJ Make Honda CRV and as a result one Ann Ambicha aged 30 years who was a passenger in a motor vehicle Registration No KAY XXXJ Honda CRV sustained injuries.

8. Count VIII is the offence of Careless driving contrary to section 49(1) of the *Traffic Act* Cap 403 Laws of Kenya. The particulars of the charge were that the applicant on the 14th day of November,2020 at about 6:30a.m, at Map area along Eldoret – Nakuru Road in Koibatek sub-county within Baringo County, being the driver of motor vehicle Registration No KAU XXXL Mitsubishi Fuso, drove the said motor vehicle in the said public road, carelessly at a speed and in a manner which was dangerous to the public, having regard to all circumstances of the case, including nature, condition, and use of the road the amount of traffic which is actually at the time on the road and caused an accident to motor vehicle Registration No SSD 123X Make Toyota Mark II Station Wagon by hitting the said motor vehicle on the right side.
9. Count IX is the offence of Reckless driving contrary to section 49(1) of the *Traffic Act* Cap 403 Laws of Kenya. The particulars of the charge were that the applicant on the 14th day of November,2020 at about 6:30a.m, at Map area along Eldoret – Nakuru Road in Koibatek sub-county within Baringo County, being the driver of motor vehicle Registration No KAU XXXL Mitsubishi Fuso, drove the said motor vehicle in the said road, carelessly at a speed and in a manner which was dangerous to the public, having regard to all circumstances of the case, including nature, condition, and use of the road the amount of traffic which is actually at the time on the road and caused an accident to motor vehicle Registration No KAY XXXJ Make Honda CRV by ramming at the rear and as a result pushed the same motor vehicle and rammed into the rear of motor vehicle KBW XXXN Isuzu FRR and both motor vehicles were damaged.
10. The applicant denied all the charges and the matter was set down for hearing and upon conclusion of the matter, the Applicant was found guilty in all the counts, was convicted and sentenced to Kshs 200,000 or 1 year imprisonment for count 1, Kshs 150,000 or 1 year imprisonment for count 2, Kshs 50,000 or 6 months imprisonment in default for count 3,4,5,6,7,8 and 9.
11. The Applicant has now approached this court through an application dated 4th December,2024 seeking review of sentence to noncustodial sentence and for the period he spent in remand from 17th December,2020 to be considered as part of the sentence as provided under section 333(2) of the *Criminal Procedure Code*. He states that he has a wife with three children and that his wife delivered all the three children through caesarean section and has been attending hospital thus his presence is required as she cannot perform difficult tasks. He added that his parents are elderly and were depending on him.
12. When the matter came up before court on the 20th January,2025, the applicant informed the court that he was sentenced to serve 5 years 6 months imprisonment. That the total fine was Kshs 750,000/ = which he was unable to pay and he is remaining with 2 years 4 months to serve in prison.
13. The court called for a social inquiry report which was filed as directed.

Social Inquiry Report

14. From the report, the applicant was born in 1983.He sat for KCSE in the year 2001 and scored grade C(plus). After school, he worked as a lorry 'turn boy' between the year 2004 and 2007. He later enrolled



for a driving course and upon completion, he secured employment as driver by various employers. Prior to his arrest, he was employed by Jafa Commodities based in Mombasa where he has worked for a period of about 5 years. His parents separated many years ago. The father lives Kirugo village, Kahuhia in Murang'a while the mother lives at Muthara area in Thika. The Applicant has three siblings.

15. The Applicant is married with 3 children. From the applicant, Circumstances of the offences are that he was driving the lorry along the Eldoret-Nakuru road early in the morning when he was suddenly stopped by Traffic police officers. Other vehicles had been stopped at the spot where the traffic police officers were. He tried to veer off the road so as to avoid hitting other motor vehicles but did not succeed thereby hitting them. He then tried to park outside the road but unfortunately the lorry lost control thereby overrunning the traffic police officer and over turned on the side of the road. The load of maize that was aboard the lorry spilled out. The officer unfortunately lost her life as a result of the impact. Another person who was in the other motor vehicle that was hit by the lorry and also passed on.
16. The Applicant admits the offence as charged. He regrets the turn of events that led to the loss of lives and destruction of the motor vehicles. The Applicant expresses remorse and pleads with the honorable court for leniency. He stated that this was the first time that he had been involved in an accident.
17. The victims' sister stated that the deceased left behind two children who were of tender age at the time of her passing on and are currently aged approximately 8 and 4 years. She went on to state that she is the one who has been shouldering the responsibility of taking care of the late deceased's children. The grandmother is elderly hence unable to support the grandchildren. She went on to state that the family is yet to receive any compensation from the insurance company.
18. The Applicant's wife described him as having lived crime-free life in the past. Similar sentiments were shared by the Applicant's elder brother. The wife of the Applicant indicated that life had become difficult for her since the time when he was arrested. She went on to state that the Applicant was the sole breadwinner in the family which comprises of 3 school-going children. She further stated that she was forced to go back to her parents' home as a result of the financial challenges.
19. The local administration of the area where the Applicant was residing before the commission of the accident stated that he did not know him well enough to comment about his character. He stated that the Applicant rarely went home, a fact which may have been attributed to by his nature of work as a long-distance driver. The couple was living in a rented house within the area.
20. The prison authorities described the applicant as well behaved and that his relatives had not been visiting him while in prison. This was as a result of the long distance between the home and the prison and the financial constraints. The Applicant is currently attached to the industry department where he is acquiring upholstery skills in Eldama Ravine prison.
21. The employer stated that the Applicant had been an obedient employee and that he had not been involved in any other traffic offence. The employer further stated that the insurance company had already compensated the late victims' families. The relative of the late victim however refuted having been paid.
22. At the time of compiling this report, the Probation Officers noted that the applicant's imprisonment period expires on 25th May 2027; he is remaining with two (2) years, three (3) months and eight (8) days.
23. On the 17th February, 2025, the Prosecution Counsel Ms. Omari submitted that she had looked at the social inquiry report which was favourable to the Applicant. She stated that she leaves the issue of review of sentence to the discretion of the court. She further that she was not objecting to the period served in remand being considered in sentencing.



Analysis And Determination

24. The application herein invokes the revisional jurisdiction of this court which gives the court powers, in appropriate cases, to review and vary any orders, decision or sentence passed by the trial court if the court was satisfied that the impugned order, decision or sentence was illegal or was a product of an error or impropriety on the part of the trial court. If the court was so satisfied, the law mandated it to make appropriate orders to correct the impugned order, decision or sentence and align it with the law. The above is the import of Section 362 as read with Section 364 of the [Criminal Procedure Code](#).
25. I have considered the mitigation by the Applicant. The Applicant pleads with this court to grant him a non-custodial sentence. I have also considered the social inquiry report which is favourable to the accused. From the report, it comes out clearly that the family and the local administration are receptive of the Applicant and are not opposed to the Applicant being released on a non-custodial sentence. The Applicant has acquired additional skill from prison industry which will be beneficial to him, his family and community. This confirms that he took imprisonment positively and used the opportunity available to improve himself.
26. The objectives of sentencing are outlined in the 2023 [Judiciary of Kenya Sentencing Policy Guidelines](#) at page 15, paragraph 4.1 as follows:

Retribution: To punish the offender for his/her criminal conduct in a just manner.

Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.

Rehabilitation: To enable the offender reform from his criminal disposition and become a law-abiding person.

Restorative justice: To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims', communities' and offenders' needs and justice demands that these are met. Further, to promote a sense of responsibility through the offender's contribution towards meeting the victims' needs.

Community protection: To protect the community by incapacitating the offender.

Denunciation: To communicate the community's condemnation of the criminal conduct.”

27. I have considered sentiments given by the family of the applicant, the local administration and the probation officer. They all talk good of the applicant. They are not opposed to noncustodial sentence for the remaining period of sentence. In view of the above, I find the Applicant suitable for a non-custodial sentence. I also note that the period he was in remand was not considered at the time of sentencing the Applicant. I therefore order that the period served in remand be computed as part of the sentence in accordance with section 333(2) of the Criminal procedure code. The application for review is allowed. The Applicant to serve probation for the remainder of the prison term.
28. Final order :-
1. The period the applicant served in remand to be computed in the sentence.
 2. The Applicant to serve probation sentence for the remaining period of sentence.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 13TH DAY OF MARCH 2025.

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RACHEL NGETICH

JUDGE

In the presence of :

-Ms. Omari for State.

-Applicant present.

-Court Assistant – Karanja.

