



**Gachunga v Republic (Criminal Revision E486 of 2023)
[2025] KEHC 13009 (KLR) (9 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 13009 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL REVISION E486 OF 2023
DO CHEPKWONY, J
APRIL 9, 2025**

BETWEEN

JACKSON MUCHIRI GACHUNGA APPLICANT

AND

REPUBLIC STATE

RULING

1. The Applicant was charged, convicted and sentenced to four (4) years imprisonment for the offence of Threatening to Kill contrary to Section 223 (1) of the Penal Code in Kikuyu Criminal Case No. E049 of 2023, Republic –vs- Jackson Muchiri Gachunga.
2. The Applicant has now filed Notice of Motion application dated 16th October, 2023 supported by his Affidavit seeking leniency and consideration of the court on sentence reduction and or liberty or a non-custodial sentence. He holds that he is remorseful for the offence and contends that while in custody, he spoke with the complainant who is his sister in law on phone and they have now reconciled. The Applicant’s prayer to this Court is for a second chance so that he can be reunited with his family, since he was their sole bread winner. He attributes his actions which led to the commission of the offence of alcoholism and promises to abandon the habit and become a law abiding citizen. He has thus urged the court to allow the application.
3. When the matter came before court for mention on 18th December, 2024, the Applicant told the court that at the time of committing the offence he was drunk and he could not recall uttering the alleged words.
4. The prosecution’s counsel opposed the application on the basis that the sentence meted against the Applicant is lenient and legal. However, he confirms that they shall comply with the court’s discretion on the matter. In rejoinder, the Applicant urged the court to also consider the period of six (6) months in custody during trial.



Analysis and Determination

5. Having read through the Supporting Affidavit sworn by the Applicant in support of the Notice of Motion application dated 16th October, 2023 and listened to the oral submissions by the Applicant and counsel for the State, this Court finds that the Applicant's application is in the nature of a Revision application.
6. The power to determine an application of this nature invokes the exercise of the supervisory jurisdiction of the High Court in criminal cases as provided for under Article 165 of *the Constitution*, 2010 and Sections 362 to 366 of the Criminal Procedure Code.
7. Article 165(6) and (7) of *the Constitution* provides that:-
 165. [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.
8. Section 362 provides that:-

[362]. 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”
9. Section 364 states as follows:-

[364]. Powers of 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 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.”
10. From the prayers sought, what the Applicant is seeking is a Review of the Sentence of four (4) years imprisonment meted against him on 12th July, 2023 to either a lesser or a non-custodial sentence. The Applicant was charged with the offence of threatening to kill a person.
11. The law on the sentence for the offence of threatening to kill is provided for under Section 223 (1) of the Penal Code which provides that:-
223. Threats to kill
- (1) 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.
12. In view of the said provision, this Court agrees with the prosecution’s counsel that the sentence of four (4) years that was meted against the Applicant by the trial Court was fair, reasonable and in consideration of the mitigating factors since the law calls for a sentence of ten (10) years imprisonment. For this reason, the application dated 16th October, 2023. Is unwarranted and commensurate to the offence the Applicant was charged with alongside the circumstances of the case, hence ought to be dismissed.
13. However, this Court notes that the time spent in custody of six (6) months during trial was not considered by the trial Court in passing sentence against the Applicant in accordance with the provisions of Section 333 of the Criminal Procedure Code which provides for computation of sentence as follows:-

“Subject to the provisions of Section 38 of the Penal Code, every sentence shall be deemed to commence from and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this Code.

Provided that where the person sentenced under Sub section (1) has prior, to such sentence shall take account of the period spent in custody.”

14. In view of this, the following orders issue:-
- a. The Notice of Motion application dated 16th October, 2023 be and is hereby dismissed.
- b. The period of six (6) months spent in custody during trial to be computed in the sentence of four (4) years imprisonment that was meted against the Applicant on 12th July, 2023.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 9TH DAY OF APRIL 2025.

D. O. CHEPKWONY

JUDGE

In the presence of:

Applicant in person present

M/S Ndeda counsel for the Respondent



