



**Irungu v Republic (Miscellaneous Criminal Application
E005 of 2024) [2025] KEHC 5556 (KLR) (5 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5556 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
MISCELLANEOUS CRIMINAL APPLICATION E005 OF 2024**

DKN MAGARE, J

MAY 5, 2025

BETWEEN

GABRIEL NDIRANGU IRUNGU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. This is a ruling over an undated application filed on 23.01.2024. It seeks review of sentence imposed by Hon. Munyendo on 16.11.2023. It was based on the ground that the court did not consider mitigation. He further stated that he regretted committing the offence.
2. The state was opposed to the application.

Analysis

3. The application for review is anchored in Section 362 of the *Criminal Procedure Code*. This vests the High Court with jurisdiction to revise criminal matters decided by lower courts in the following terms:

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.

4. Accordingly, the court's revisional jurisdiction is confined to examining the correctness, legality, and propriety of any findings, sentences, or orders passed by the subordinate court. Section 364 (5) of the *Criminal Procedure Code* restricts the revisional jurisdiction as follows:

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.



5. The offence under which the Applicant was charged attracts a heavy penalty. Section 4 of the [Narcotic Drugs and Psychotropic Substances \(Control\) Act](#) No 4 of 1994 provides as follows:

Penalty for trafficking in narcotic drugs, etc. Any person who traffics in any narcotic drug or psychotropic substance or any substance represented or held out by him to be a narcotic drug or psychotropic substance shall be guilty of an offence and liable

- a. in respect of any narcotic drug or psychotropic substance to a fine of one million shillings or three times the market value of the narcotic drug or psychotropic substance, whichever is the greater, and, in addition, to imprisonment for life; or
 - b. In respect of any substance, other than a narcotic drug or psychotropic substance, which he represents or holds out to be a narcotic drug or psychotropic substance to a fine of five hundred thousand shillings, and, in addition, to imprisonment for a term not exceeding twenty years.
6. Sentencing is a matter of discretion of the trial court and may be interfered only in exceptional circumstances. In the case of [MM1 v Republic](#) [2022] eKLR, the Court referred to the case of [Mokela v The State](#) (135/11) [2011] ZASCA 166 where the Supreme Court of South Africa held that:

“It is well-established that sentencing remains pre-eminently within the discretion of the sentencing court. This salutary principle implies that the appeal court does not enjoy *carte blanche* to interfere with sentences which have been properly imposed by a sentencing court. In my view, this includes the terms and conditions imposed by a sentencing court on how or when the sentence is to be served.”

7. This court will not alter a sentence unless the trial court has acted upon wrong principles or overlooked some material factors. The Court of Appeal in [Ogolla s/o Owuor v Republic](#) [1954] EACA 270, held that “The Court does not alter a sentence unless the trial Judge has acted upon wrong principles or overlooked some material factors.”
8. This court may also interfere if the sentence is excessive and therefore an error of principle has occurred. In the case of [Shadrack Kipkoech Kogo v R Eldoret Criminal Appeal No 253 of 2003](#) the Court of Appeal held that:

“Sentence is essentially an exercise of discretion by the trial court and for this court to interfere it must be shown that in passing the sentence, the sentencing court took into account an irrelevant factor or that a wrong principle was applied or that short of these, the sentence itself is so excessive and therefore an error of principle must be interfered (see also [Sayeka v R.](#) (1989 KLR 306)).

9. The Applicant was trafficking in 123 rolls of cannabis and 2.75 kg of Cannabis sativa valued at Kshs 88,650/=. He did not plead guilty but went through the entire trial. The court considered mitigation and the pre-sentence report. The quantity of the drugs was humongous. The sentence was a slap on the wrist and very lenient. The sentence is not illegal or irregular. Indeed, the court even complied with section 333(2) of the Act. The court finds no justifiable basis to interfere with the sentence imposed in this matter. As a matter of law, interference with a sentence passed by a subordinate court is permissible only in exceptional cases through appeal or review. Consequently, the application stands dismissed.

Determination

10. In the upshot, I make the following orders: -



- a. The application for review filed herein on 23.01.2024 is dismissed for lack of merit.
- b. The lower court file be returned for safe keeping.
- c. The file is closed.

DELIVERED, DATED AND SIGNED AT NYERI ON THIS 5TH DAY OF MAY, 2025. RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.

KIZITO MAGARE

JUDGE

In the presence of:-

pro se Applicant

Mr. Kimani for the Respondent

Court Assistant – Michael

