



**Rotich v Republic (Miscellaneous Criminal Application  
E052 of 2024) [2025] KEHC 5952 (KLR) (8 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5952 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KABARNET  
MISCELLANEOUS CRIMINAL APPLICATION E052 OF 2024**

**RB NGETICH, J**

**MAY 8, 2025**

**BETWEEN**

**LINUS ROTICH ALIAS AMURABI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant Linus Rotich Alias Amurabi was charged with the offence of Grievous Harm contrary to section 234 of the *Penal Code*. The particulars of the charge were that the Applicant on the 11<sup>th</sup> day of June, 2020 at about 1530 Hours at Sesia Village in Baringo Central Sub- County within Baringo County, unlawfully did grievous harm to Solomon Ng'etich.
2. The Applicant denied the charge and upon full trial, by Judgement delivered on the 27<sup>th</sup> day of January, 2022 the trial court found accused guilty, convicted him of the offence under section 215 of the *Criminal Procedure Code* and on the 22<sup>nd</sup> February, 2022 sentenced the applicant to serve 15 years imprisonment.

**Application For Review Of Sentence.**

3. The Applicant has now petitioned this court vide an un dated application brought under the provisions of Article 1(c), 2(d), 22(1)(4), 23(1), 25(c), 27(1), 28, 29(9)(f), 50, 51, 159(2) and 165(3) (9)(b)(d) of the *Constitution* of Kenya, 2010, Section 213, 216, 329, 362, 364(1)(b) of Cap 75 Laws of Kenya, the *Sentencing policy guidelines*, fundamental rights and freedom under Article 27, 28 and 48 of the *Constitution*. The applicant is seeking for sentence review in accordance to Article 50(2) (p) (q) of the *Constitution*. The applicant further avers that he is remorseful, repentant, reformed and rehabilitated as he has learnt a hard lesson while in custody and now begs for leniency.



4. When the matter came up for hearing on the 13<sup>th</sup> February,2025, the Applicant informed the court that he had filed another application in which he applied for sentence review for the sentences to run concurrently. That in this application, his prayer is that the period of 15 years for the offence of grievous harm and Arson 3 years imprisonment for the offence of arson be reduced which this court had allowed the sentences to run concurrently.
5. This court called for social inquiry report which was duly filed on the 10<sup>th</sup> March,2025.

### **Social Inquiry Report.**

6. From the report, the Applicant had formal education up to class 8 and sat for KCPE but did not proceeded with his education due to lack of parental support. In the year 2015 he relocated to Ravine and started casual jobs within the community. He worked there for a period of 5 years then returned home and continued doing casual jobs within the community. In the year 2021, he was arrested for the offence herein. The Applicant is single but with a baby boy who is currently with the mother at Marigat. For the period he has been in custody, the Applicant has acquired skills in carpentry and bead work but he has not done any examinations.
7. The Applicant's father indicated that the Applicant's major challenge is excessive alcohol use and negative peer influence. He however says that the applicant has learnt his lesson and prayed that he be given a chance to start life afresh. He added that before the demise of the victim, they had visited the victim's family for reconciliation but the victim's wife did not want to listen to them. He said they visited the family again in March 2025 for reconciliation process and they were well received and they were able to reconcile.
8. The Applicant accepts the offence as charged and the sentence he was given. He prays for his sentence to be reduced and be allowed to serve non-custodial sentence. He prays for community-based rehabilitation so that he can restart his life afresh. During the interview, the Applicant indicated that his major challenge was excessive alcohol abuse and anger management issue and during the period he has been in custody he has received several counseling sessions and at the moment he is a changed man. The Applicant indicated that before the victim passed on, he had reconciled with her. The victim's family confirmed that they have reconciled with the applicant and have forgiven him.
9. The local administrator confirmed that the victim passed on last year January due to illness and the victim and the Applicant had started reconciliation process but they never completed the process. He says the applicant has been in custody for long and must have learnt a lesson. He confirmed that the two families had a reconciliation meeting and there is no animosity between them.

### **Determination.**

10. 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*.
11. In this case, the applicant has maintained that he is remorseful, reformed and his prayer is that he be granted a non-custodial sentence for the remainder of his term.
12. I have considered the mitigation by the Applicant. The Applicant has pleaded upon this court to grant him a non-custodial sentence. I have also considered the social inquiry report which is favourable to



the Applicant, the report indicates that the Applicant has been in custody since September,2021 and he is to complete his sentence in April,2031. He prays that his sentence be reduced so that he can serve non-custodial sentence so that he can re-start his life a fresh. He accepts the offence and the sentence and he indicated that he has reconciled with the victim before he passed on.

13. 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.”

14. I have considered the social inquiry report, specifically the sentiments of the secondary victims that they have reconciled and have forgiven the Applicant, the sentiments of the Applicants family who have prayed to have the Applicant released stating that the period he has been in custody has thought him a lesson. The report further indicates that the Applicant while in custody has acquired skills in carpentry and beadwork though he has not done any exam. From the report, the Applicant's family plus the community are willing to facilitate his rehabilitation within the community. In view of the above, I am inclined to revise applicants' sentence to probation sentence for a period of 3 years.

15. Final Orders: -

Accused to serve probation sentence for a period of 3 years.

**RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 8<sup>TH</sup> DAY OF MAY 2025.**

**RACHEL NGETICH**

**JUDGE**

In the presence of:

- CA Elvis/Momanyi.

- Ms. Kosgei for state.

- Applicant present.

