



Ssekajigo v Republic (Miscellaneous Criminal Application E004 of 2025) [2025] KEHC 7069 (KLR) (23 May 2025) (Ruling)

Neutral citation: [2025] KEHC 7069 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
MISCELLANEOUS CRIMINAL APPLICATION E004 OF 2025**

JN ONYIEGO, J

MAY 23, 2025

BETWEEN

ABDU RASHID SSEKAJIGO APPLICANT

AND

REPUBLIC RESPONDENT

(Being a revision application against the sentence of Hon. P. Areri (Pm) delivered on 6-01-20 in Mandera PM’s court in criminal case number 229 of 2019)

RULING

1. The applicant herein was arraigned before Mandera PM’S court charged with four counts. Count I, he was charged with being a member of a terrorist group contrary to Section 24 of the *Prevention of Terrorism Act*, 2012. The particulars were that, on or before 23.06.2019 at Mandera border within Mandera County, he was found being a member of a terrorist group namely Al-Shabaab, ISIS/ISIL (Islamic State in Syria and Islamic State in Libya).
2. 1. Count II, he was faced with the charge of being found in Possession of articles connected with the commission of a terrorist Act contrary to section 30 of the Prevention of Terrorism Act of 2012. Particulars were that on 23.06.2019 at Mandera Border Post within Mandera County knowingly he had in his possession a mobile phone make Sony Xperia model z4 IMEI No. 351336270058517 fitted with Safaricom micro Sim Card S/No. 8924402100xxxxxxxxxxxxxxxx that had images namely: 196xxxxxxx, 6ccd3485d79d3926, 7af0068674f0687, 24f9352d4711392d, 33db18b6ce2a28db, 884a0e04dc27cd7d, 8125e949915feaac, aa38b42aab36b4d3, fb_img1482736401186, imgcache.0.embedded_1.jpg, imagecache.0.embedded_100.jpg, imagecache.0.embedded_108.jpg, imgcache.0.embedded_1091.jpg, imgcache.0.embedded_123.jpg, imgcache.0.embedded_141.jpg, imgcache.0.embedded_1jpg159.jpg, imgcache.0.embedded_160.jpg, imgcache.0.embedded_162.jpg, imgcache.0.embedded_163.jpg which are articles for the use in preparing to commit a terrorist act.



3. Count III, he was charged with being found in Possession of articles connected with the commission of a terrorist act contrary to section 30 of the *Prevention of Terrorism Act* of 2012. Particulars were that on 23.06.2019 at Mandera Border Post within Mandera County, knowingly he had in his possession a mobile phone make Infinix Model IMEI No. 3577000xxxxxxx/357700xxxxxxx/357700xxxxxxx fitted with Airtel Simcard 892430208xxxxxxx 2. 89256010xxxxxxx 3. MTN Simcard 0116xxxxxx that he used to collect and transmit information to wit audios namely:

1. Rogo 1.mp3 – 65 MB – 01.11.11.
2. Rogo 2.mp3 – 81MB – 01.28.37.
3. Rogo 3. p=mp3 – 21MB – 23.13.
4. Rogo 4.wav – 16MB – 01.09.29.
5. Rogo 1 Hakuna Usiyano kati ya uislamu na kafiri.ramadhani – 49.3MB – 00.53.54
6. Rogo 2 Ibrahimu 3.MP3 – 0 bytes
7. Rogo 4 aswahabul kahff 1.mp3 – 12.8 MB – 00.56.05.
8. Rogo 4 aswahabul kahff 2.mp3 – 13.4 MB – 0058.42.
9. Rogo 4 aswahabul kahff3 Uhdud.mp3 – 12.0 MB – 00.52.38.
10. Rogo aswahabul kahff 4.mp3 – 12.5 MB – 00.54.51.
11. Rogo Muhammadi.mp3 – 9.6 MB 00.42.09.
12. Rogo faida ya jihad 1.mp3 – 25.9mb – 01.53.26.
13. Rogo faida ya jihad 2.mp3 – 11.8 mb – 00.51.36.
14. Rogo Ghuruba.mp3 8.5mb – 00.37.20.
15. Rogo hukmullah ndio dini 4.mp3 – 5.2 mb – 00.23.06.
16. Rogoidi 2006.mp3 -78.2 mb 00.56.57.
17. Rogoidi 2012 – 1.mp3 – 15.6mb 00.11.24.
18. Rogoidi 2012 -2.mp3 9.8mb 00.07.11.
19. Rogo jihadi 1 simba.mp3 – 16.2mb – 01.11.11.
20. Rogokafiri hakupendi.mp3 22.7mb – 00.24.53.
21. Rogo kumbuka mawuti.mp3 – 30.7mb – 00.22.22.
22. Rogokubukautakapoatswa kaburini.mp3 – 45. 1 mb – 00.32.53.
23. RogoMawutinauhai 1.mp3 – 43.8mb – 0031.54.
24. RogoMawutinauhai 2.mp3 – 17.4mb – 00.12.43.
25. Rogonguzoya atawidi.mp3 – 15.5mb – 01.07.44.
26. Rogorahimahulla 2.mp3 – 15.8mb – 00.11.34.
27. Rogo serekali.mp3 – 55.5 – 01.00.41.



28. RogoTusipigekura 1 22.mp3 – 14.0mb – 01.01.15.
29. RogoTusipigekura 2 izadjanasrullahi. Mp3 – 91.7mb 01.06.48.
30. Rogotusipigekura 3 izadja nasrullahi. Mp3 – 15.8mb – 00.11.34.
31. RogoUislamusiwamutu A. mp3 – 112.7mb – 01.22.06.
32. RogoUislamusiwamutu B.mp3 – 15.7mb – 01.08.59.

For use in preparing to commit a terrorist act.

4. Count IV, he was charged with facilitation for recruitment of persons to a Terrorist Group c/sec 13A of the *Prevention of Terrorism Act* of 2012. Particulars were that on the diverse dates between 17.06.2019 and 23.06.2019 and at diverse locations being the Kenya – Uganda border at Busia, Mombasa – Kenya, Garissa and Kenya – Somalia border at Border Point IV at Mandera, he knowingly facilitated the recruitment into Al-Shabaab of two Congolese nationals namely: Shadrack Jacob alias Ramadhan Yakobo and Kasereka Kanyama Adolphe alias Issa Suleiman.
5. He pleaded not guilty to all the counts and the matter proceeded for hearing. Upon conclusion of the trial, the appellant was convicted of counts I, III and IV and consequently sentenced to serve 10 years’ imprisonment for each count. Sentences were to run concurrently.
6. Aggrieved by the said conviction and sentence, he appealed against the same vide criminal appeal number E020 OF 2022. On 27-06-2024, the appeal was dismissed in its entirety.
7. Un deterred, he has now moved this court via a notice of motion dated 23-01-2025 seeking review of sentence on grounds that he has reformed, he is remorseful, he is the sole breadwinner of his family and that his family is ready to receive him back home.
8. In response, Mr. Owuor for the state opposed the application on grounds that the sentence meted out was lenient considering the severity of the offence committed.
9. I have considered the application herein and the response thereof. This court is being asked to revisit the issue of sentence after having dismissed it on appeal. The revision application is now pleaded in the format of mitigation.
10. The law governing revision in a criminal case is section 362 and 364 of the CPC. Section 362 and 364 provides as follows;

“ 362. Power of High Court to call for records

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.

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

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- (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.
 - (c) in proceedings under section 203 or 296(2) of the Panel Code (Cap. 63), the *Prevention of Terrorism Act* (Cap. 59B), the *Narcotic Drugs and Psychotropic Substances (Control) Act* (Cap. 245), the Prevention of Organized Crimes Act (Cap. 59), the *Proceeds of Crime and Anti-Money Laundering Act* (Cap. 59A), the *Sexual Offences Act* (Cap. 63A) and the *Counter-Trafficking in Persons Act* (Cap. 61), where the subordinate court has granted bail to an accused person, and the Director of Public Prosecution has indicated his intention to apply for review of the order of the court, the order of the subordinate court may be stayed for a period not exceeding fourteen days pending the filing of the application for review.
- (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.

11. It is clear from the above provisions that an application for review of sentence can be entertained only for purposes of the court satisfying itself as to the correctness, legality or propriety of the proceedings. Section 364(5) of the CPC is emphatic that no application for revision should be entertained where an appeal lies from a sentence or order. This position was espoused in Criminal Revision number 194 of 2023 Kisii High court in the case of Barongo Siany Atembe.



12. In the circumstances of this case, the court is being asked to exercise sympathy or mercy. That is not ground for revision. If it is on account of the sentence being excessive, the same is spent as it was dealt with on appeal. In a nut shell, it is my finding that the application is not merited hence the same is dismissed.

DATED, SIGNED AND DELIVERED THIS 23RD DAY OF MAY 2025

J. N. ONYIEGO

JUDGE

