



**Wambui v Republic (Criminal Revision E312 of 2024)
[2025] KEHC 6263 (KLR) (13 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6263 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CRIMINAL REVISION E312 OF 2024
CW GITHUA, J
MAY 13, 2025**

BETWEEN

AMOS MWANGI WAMBUI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant herein, Amos Mwangi Wambui moved this court by way of a Notice of Motion dated 5th August 2024 seeking revision of his sentence imposed by the trial court in Muranga Chief Magistrate's Court Criminal Case No E304 of 2024.
2. The record of the trial court reveals that the applicant was charged in two counts with different offences. In Count 1, he was charged with the offence of threatening to kill Contrary to Section 223 (1) of the *Penal Code* while in Count 2, he was charged with the offence of malicious damage to property Contrary to Section 339 of the *Penal Code*. He was convicted on his own plea of guilty with the offence of malicious damage to property following which he was sentenced to pay a fine of Kshs 40,000 in default to serve nine months imprisonment.
3. He denied the charges in Count 1. After a full trial, the applicant was convicted and was sentenced to serve eight years imprisonment. This is the sentence which the applicant now invites this court to revise given that he has already completed serving the sentence passed by the trial court in default of payment of fine imposed in respect of count two.
4. At the hearing, the applicant made oral submissions in support of his application. He expressed remorse for his unlawful actions and stated that he had already reconciled with his grandmother who was the victim of his crimes. He also submitted that he had undertaken several rehabilitative programmes in prison which had imparted on him various skills which would enable him earn a livelihood if his prayer for revision was allowed. He urged this court to allow the application and



substitute his custodial sentence with a non-custodial sentence or commute it to the period already served.

5. The application was contested by the respondent through learned prosecution counsel, Ms. Muriu who supported the sentence meted out by the trial court. She submitted that the court should balance the remorse expressed by the applicant with the rights of the victim, the applicant's grandmother who was allegedly living in mortal fear of him.
6. I have duly considered the application and the brief oral submissions made by both parties. I have also read the record of the trial court. Under Section 362 of the *Criminal Procedure Code* (CPC), the High Court is vested with jurisdiction to call for and examine the record of the lower court in criminal proceedings to satisfy itself as to the correctness, legality or propriety of any finding, sentence or order made by the trial court or the regularity of any proceedings before that court.
7. It is trite that sentencing is at the discretion of the trial court. This court when exercising its supervisory jurisdiction can only interfere with the trial court's discretion if it was satisfied that the sentence was illegal or that when passing the sentence, the trial court applied wrong legal principles or considered extraneous factors or failed to consider relevant ones.

See : *Bernard Kimani Gacheru v Republic* [2002] eKLR

8. In this case, as stated earlier, the sentence which the applicant requests this court to review is the sentence imposed in respect of count 1. The sentence prescribed by the law for the offence of threatening to kill is a maximum of ten years imprisonment. In this case, the learned trial magistrate in her discretion sentenced the applicant to eight years imprisonment. The sentence was therefore lawful as it was in accordance with the law. A perusal of the trial court's record does not also show that when passing the sentence, the learned trial Magistrate misdirected herself or applied wrong legal principles. Given the relationship between the applicant and the victim and the circumstances in which the offence was committed, I cannot also say that the sentence was manifestly excessive.

It is therefore my finding that the applicant has failed to establish any basis to justify intervention by this court by way of revision on terms sought.

9. It is also important to note that the revisional jurisdiction of this court is limited by Section 364 (5) of the *CPC* which provides that ;

“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. Being the accused person in the trial court, the applicant had an automatic right of appeal to this court if he was aggrieved by either his conviction or sentence. The applicant chose not to challenge his sentence on appeal and he was now precluded by the law from approaching this court by way of revision unless it was on grounds that the sentence was patently illegal or that there was an error apparent on the face of the trial court's record which, if not quickly corrected by this court by way of revision was likely to occasion a grave miscarriage of justice. This is not the case in this application.
11. In my considered view, the grounds relied on by the applicant in this application cannot form the basis of the court's exercise of its revisional jurisdiction. They can only aid him if he was to petition His Excellency the President for the exercise of his prerogative of Mercy under Article 133 of the *Constitution* of Kenya 2010.
12. For the foregoing reasons, I find that this application lacks merit and it is hereby dismissed.



DATED, SIGNED AND DELIVERED AT MURANGA THIS 13TH DAY OF MAY 2025.

HON. C.W. GITHUA

JUDGE

In the Presence of:

The Applicant

Ms. Muriu for the Respondent

Ms. Susan Waiganjo, Court Assistant

