



**Wachira v Republic (Miscellaneous Criminal Application
E075 of 2024) [2025] KEHC 5853 (KLR) (8 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5853 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
MISCELLANEOUS CRIMINAL APPLICATION E075 OF 2024**

DKN MAGARE, J

MAY 8, 2025

BETWEEN

ELIUD MUHORO WACHIRA APPLICANT

AND

REPUBLIC RESPONDENT

(From the original conviction and sentence in Nyeri High Court HCCRA E049 OF 2021, Wendy Michemi J, and Karatina MCSO 17 of 2020 by Hon. K M Njalale, PM)

RULING

1. When I grow old, I would like to be dealing with fiction. The Applicant herein has shown that there is a need to have legislative intervention akin to Order 45 Rule 6 of the [Civil Procedure Rules](#). The said rule provides as follows:

“No application to review an order made on an application for a review of a decree or order passed or made on a review shall be entertained.

2. Lady Justice Wendy Michemi J, made a decision on 31.07.2024, where the sentence and conviction were upheld. That was considered the end of the matter in this court. The applicant filed an undated application for review on 15.08.2024, that is 15 days later. They proceeded as if the court had done nothing. He stated that the court had not considered section 333(2) of the [Criminal Procedure Code](#).
3. 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. Though enacted earlier, the same has roots in Article 165(6) of [the constitution](#). It is also subject to limitations within the act prohibiting supervision of the superior court. This is amplified in Article 165(7) of the [constitution](#). The two clauses are as follows:

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.

6. The Applicant had the right to appeal against the sentence and conviction. He could have also appealed to the Court of Appeal. He cannot approach this court through an application for revision even after another High Court has made orders. The orders could only have been appealable. It would be irregular and illegal for this court to review the High Court's sentence in the circumstances.

7. There is no basis for reviewing the judgment. If the applicant had anything worthwhile, he should have said it before lady justice Wendy Michemi. The court is functus officio.

8. The Applicant has three options. First, to await his fate and serve sentence as given. Secondly, to seek to extend the time within which to appeal to the Court of Appeal. Thirdly, petition the President under Article 133 of the [Constitution](#), which provides as follows:

- (1) On the petition of any person, the President may exercise a power of mercy in accordance with the advice of the Advisory Committee established under clause (2), by-

- (a) granting a free or conditional pardon to a person convicted of an offence;
- (b) postponing the carrying out of a punishment, either for a specified or indefinite period;
- (c) substituting a less severe form of punishment; or
- (d) remitting all or part of a punishment.

- (2)

- (3) ...

- (4) The Advisory Committee may take into account the views of the victims of the offence in respect of which it is considering making recommendations to the President.



9. 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 circumstances, I make the following orders:
- a. The court is functus officio. The undated application for review filed on 15.08. 2024 is dismissed in limine.
 - b. The file is closed.

DELIVERED, DATED AND SIGNED AT NAIROBI ON THIS 8TH DAY OF MAY, 2025.

Ruling is delivered through the Microsoft Teams online platform.

KIZITO MAGARE

JUDGE

In the presence of: -

Mr. Kimani for the State

Applicant – present

Court Assistant – Michael/Munguti

