



**Kamundi v Republic (Criminal Revision E256 of 2024)
[2025] KEHC 7790 (KLR) (4 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 7790 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NANYUKI
CRIMINAL REVISION E256 OF 2024
AK NDUNG’U, J
JUNE 4, 2025**

BETWEEN

DANIEL MUKUNYI KAMUNDI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Vide an application titled "Sentence Review" dated 24th July 2024, Daniel Mukunyi Kamundi seeks a revision of the sentence of 6 years passed against him in MCCRC No. E029 of 2018 on the 12th day of September 2023.
2. He raises the following grounds which I set out verbatim;
 - i. That he pleaded not guilty to the offence
 - ii. That the grounds of Revision are attached therein.
 - iii. That the medical documents are attached therein.
 - iv. He wish to be present during the hearing this Revision.
3. The application is further supported by his sworn affidavit of even date in which he avers that his application is based on medical grounds as he has been struck by a stroke and half of his body is paralyzed.
4. Further that he is unable to talk due to the illness and he relies on fellow inmates to do things including bathing.
5. He adds that he has lost control of his urine and stool output.
6. He seeks a non -custodial sentence.



7. The application was canvassed by way of written submissions.
8. On his part the applicant submitted that he moved this court under its revisionary jurisdiction as provided under Article 165 (6) and (7).
9. That the learned trial magistrate failed to consider the finding of the probation pre-sentencing report which favoured him to be granted a non-custodial sentence.
10. He placed reliance on the probation pre-sentence report dated 12th of September 2023.
11. It is urged that while serving sentence the applicant herein was struck by sickness whereby he got a right sided weakness which has hence affected his daily activities in the process rehabilitation in prison.
12. He relied on the medical evidence attached to the application herein dated 20th June 2024 prepared at the Nyeri County Referral Hospital Imaging Department. That the applicant have had difficulties as he cannot wash clothes, hold a spoon to eat and going for a long call he relies on fellow inmates to support him due to this illness your Lord.
13. The Respondent submitted that the Applicant has adduced his history of sickness supported a copy of medical documents as the main and only grounds of revision. He prays that this honourable court revises the order of custodial sentence, set it aside and substitute it with a non-custodial sentence.
14. It is urged that the Applicant's sickness is not a ground for revision and does not warrant this court to interfere with the discretion exercised by the trial court on sentencing.
15. One issue is flagged for determination; Whether this court should exercise its revisionary jurisdiction and substitute or review the sentence imposed by the trial court.
16. I have considered the application before court. The question for determination is whether this court has jurisdiction to entertain the application. Put simply, whether the applicant has achieved the threshold for the invocation of the revisionary jurisdiction of this court.
17. Article 165 (6) and (7) of the Constitution provides for the jurisdiction of the High Court with regard to Revision. It stipulates as follows:
 - 6) 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.”
18. Section 362 of the *Criminal Procedure Code*, then provides as follows:

The High Court may call for examine and 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.”
18. The purpose of the Court's revisionary powers is therefore to check the legality, propriety, regularity or correctness of proceedings so that there may not be a miscarriage of justice.



19. The jurisdiction can only be exercised where an illegality incorrectness, irregularity or impropriety is shown to exist.
20. The revisionary jurisdiction of the High Court was examined by Odunga J (as he then was) in the case of *Joseph Nduvi Mbuvi as Republic* [2019] eKLR as follows:

In my considered view, the object of the revisional jurisdiction of the High Court to enable the High Court in appropriate case, whether during the pendency of the proceedings in the subordinate court or at the conclusion of the proceedings to correct manifest irregularities or illegalities and give appropriate direction on the manner in which the trial, if still ongoing, should be proceeded with. In other words, the High Court's revisionary jurisdiction includes ensuring that where the proceeding the lower court has been legally derailed, necessary direction are given to bring the same back on track so that the trial proceeds towards its intended destination without hitches. Not only is the jurisdiction exercisable where the subordinate court has made a finding, sentence or order but goes on to state that it is also exercisable to determine the regularity of any proceedings of any such subordinate court as well."

21. Nyakundi J, in *Prosecutor vs Stephen Lesinko* [2018] eKLR outlined the principles that should guide a court in exercising its reversionary jurisdiction as follows:
 - a) Where the decision is grossly erroneous; b) Where there is no compliance with provisions of the law; c) Where the finding of the fact affecting the decision is not based on evidence or it is result of misreading or non-reading of evidence on record; d) Where the material evidence on the parties is not considered and e) Where the judicial discretion is exercised arbitrarily or perversely if the lower court ignores facts and tries the accused of lesser offence."
22. Sickness is not a ground upon which to revise a sentence procedurally passed by a subordinate court. While it is acknowledged that a victim of sickness at prison deserves attention, the remedy is not a review of the sentence. Prison authorities have facilities to offer treatment to ailing prisoners including escorting them to referral hospitals.
23. The Applicant has failed to establish any ground upon which his sentence can be reviewed. The available avenue is for the Applicant's case to be placed before the Power of Mercy Advisory committee for consideration.
24. With the result that the application fails and is dismissed.

DATED SIGNED AND DELIVERED VIRTUALLY THIS 4TH DAY OF JUNE, 2025.

A.K. NDUNG'U

JUDGE

