



**Mwangi v Republic (Criminal Revision E064 of 2024)
[2025] KEHC 8011 (KLR) (4 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8011 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CRIMINAL REVISION E064 OF 2024**

TW OUYA, J

JUNE 4, 2025

BETWEEN

JOHN GATEMBO MWANGI APPLICANT

AND

REPUBLIC RESPONDENT

(Arising from conviction and sentence of Muranga High Court at Muranga in Criminal Case No. 40 of 2018 by Hon. Justice Kanyi Kimondo on 9th December 2021)

RULING

Background

1. This ruling is in respect of the application dated 23rd September 2024. The brief facts of this matter are that the Applicant herein was initially arrested and charged in High Court Criminal Case No. 40 of 2018 at Murang'a High Court for the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. Due to a plea bargain which he consented to, he was sentenced to serve 10 years' imprisonment.
2. The Applicant is now seeking the review of the sentence to one of probation. The application is premised on the grounds on the following grounds:
 - a. That the honorable court, in its discretion, considers the Applicant's personal circumstances and rehabilitation efforts as reasons for granting probation.
 - b. That the Applicant is a first-time offender, having no prior criminal record.
 - c. That the Applicant has enrolled in rehabilitation programs and has demonstrated a commitment to reintegrate into society.



- d. That the Applicant has demonstrated good conduct and behaviour during incarceration, reflecting a commitment to reform, as recommended by the officer in charge.
 - e. That the Applicant has reformed and does not pose a threat to society.
 - f. That the Applicant has served over three quarter (¾) of his sentence.
 - g. That the honourable court issue any relief it deems just and fit to grant in the circumstances.
3. During the hearing of the application on 5th May 2025, the state counsel stated that the Applicant was sentenced by Kimondo, J. through a plea bargain for manslaughter and in November 2018 he was sentenced to 10 years' imprisonment. He thus submitted that this court has no jurisdiction to entertain the application herein as the only remedy the Applicant has is to appeal to the Court of Appeal against the sentence.

Analysis and Determination

4. The exercise of this Court's revision jurisdiction is provided for under the provisions of Section 362 of the *Criminal Procedure Code* which gives the Court the power to call for and examine the record of any criminal proceedings before a subordinate court for purposes of satisfying itself as to the legality, the correctness or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of any subordinate court. Section 364 thereof provides that:
- “(1) In the case of proceedings in the subordinate court the record of which has been called for or which otherwise comes to its knowledge the High Court may –
- a. In the case of a conviction exercise any of the powers conferred to the Court of Appeal by Sections 354, 357 and 358 and may enhanced the sentence.
 - b. In the case of any other order other than an order of acquittal alter or reverse the order.”
5. From the above provision, it is clear that the revisionary jurisdiction of this Court is exercised over the subordinate courts and should only be invoked to determine the legality, correctness or propriety of the sentence given by the court on the Applicant's application. In order to exercise that power, the court must be satisfied that the trial court acted upon wrong principles or failed to consider some fundamental principles. The jurisdiction of this court on Revision over the subordinate courts is supervisory.
6. Article 165(6) of the *Constitution* entrenches the jurisdiction of this Court which is exercised by way of revision over the subordinate courts. It states:
- “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. In the instant application, the Applicant is seeking the review of his sentence on account that he is regretful, remorseful and has since rehabilitated. The Applicant did not appeal against his sentence. The present applicant appears to be an appeal in the guise of a revision. The Applicant ought to have lodged an appeal against the decision of the court if he was dissatisfied with the same. Even if the Court had jurisdiction to entertain the application which, as I have stated is not clothed with that jurisdiction,



the Court may not entertain an application for a revision of a finding, sentence or order if the Applicant did not file an appeal.

8. In this matter the case was determined by means of a plea bargain agreement. The Applicant agreed that the Court had discretion to impose any sentence as provided by the law. This Court complied with Section 216 of the *Criminal Procedure Code*, received and considered his mitigation and the sentence of 10 years' was to run from 5th November 2018, being the date when the Applicant was first presented to court and placed in custody. With that, the Court exercised its discretion. The application for the review of the sentence is therefore not properly before this court.
9. In the end I order that the Applicant's application dated 23rd September 2024 lacks merits and is thus dismissed.

DATED, SIGNED AND DELIVERED BOTH VIRTUALLY AND PHYSICALLY ON THIS 4TH JUNE, 2025.

HON. T. W. OUYA

JUDGE

For Applicant.....John Gatembo Mwangi in person

For Respondent.....P. Mwangi

Court Assistant.....Jackline

