



REPUBLIC OF KENYA



**Wangui v Republic (Criminal Revision E241 of 2024)  
[2025] KEHC 8042 (KLR) (4 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8042 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MURANG'A  
CRIMINAL REVISION E241 OF 2024**

**TW OUYA, J**

**JUNE 4, 2025**

**BETWEEN**

**PETER NDUATI WANGUI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Arising from conviction and sentence of Kandara Criminal  
Case No. E940 of 2024 by Hon. R. N. Kimeu on 6th June 2024)*

**RULING**

1. This ruling is in respect of the application which is undated though the brief facts of this matter are that the Applicant herein was initially arrested and charged in Kandara Criminal Case No. E940 of 2024 for the offence of assault contrary to Section 251 of the Penal Code.
2. The Applicant seeks a revision of the sentence of 2 years' imprisonment imposed on him by the trial court. The Application is premised on Sections 123, 362, 364, 365, 366 and 367 of the Criminal Procedure Code.
3. The application is supported by the Applicant's sworn affidavit in which he stated he had not lodged an appeal to the High Court, he had no other pending matters before any court as he asked the Court to consider that he was a young man suffering from hemorrhoids and back pain after having been involved in an accident years back thus urged the court to impose a non-custodial sentence or a conditional discharge under Section 35(1) of the Criminal Procedure Code, suspended sentence or both considering the circumstances herein.
4. During the hearing of the application, the Applicant was absent though the state counsel proceeded by reiterating that the charge and sentence meted out to the Applicant were appropriate. That they were opposed to the application for the trial magistrate had noted that the Applicant had admitted on his



own volition that he was a repeat offender. Also, the pre-sentence report was not favourable for him thus asked the Court to dismiss the application.

5. I have considered the application, the supporting affidavit and the trial record and I find that the only issue for determination is whether the application is merited and whether the sentence imposed ought to be revised. The [Constitution of Kenya](#) provides for the rights of an accused person under Article 50 as follows:

“(2) Every accused person has the right to a fair trial, which includes the right -  
(q) if convicted, to appeal to, or apply for review by, a higher court as prescribed by law.”

6. On Revision, it is the duty of this Court to review and reconsider in totality, the correctness, legality and appropriateness of the sentence imposed by the trial magistrate. This Court notes the importance of sentencing in a criminal trial and appreciates that it is only the trial court which enjoys the privilege of seeing and examining witnesses in a trial on a first hand basis and is therefore best placed to determine an appropriate sentence for a convicted person. The exercise of discretion by a trial court must however not be subjected to undue interference unless there is an error of law of fact or that the sentence is manifestly harsh. From the facts of this case, it emerges that the Applicant admitted during plea taking admitted not only to the charge but also the facts read out to him.
7. Before sentencing, the trial magistrate actually allowed the parties to attempt alternative dispute resolutions before the pre-sentence report could be availed. The said report revealed that the Applicant on his own volition admitted having been sentenced for a period of 12 years’ at Nairobi West Prison for the offence of handling stolen goods. That he had further admitted to having absconded bail/bond terms at Kandara Law Courts where he had been charged with an offence of breaking and stealing shoes belonging to a police officer.
8. Although the file was not traced, he was said to have been a murder suspect and thereafter he was charged with another case of stealing leading to his imprisonment at Thika Prisons and once again, no records of the same could be traced. Upon conviction, the Applicant in his mitigation merely asked the court to consider that he had a wife and children who used to rely on him and finally asked for forgiveness. He was finally sentenced to 2 years’ imprisonment. Section 251 of the [Penal Code](#) with which the Applicant was charged and convicted states as follows:

“Any person who commits an assault occasioning actual bodily harm is guilty of a misdemeanour and is liable to imprisonment for five years.”

9. The terms “is liable” implies that the sentence of 5 years is not mandatory in nature and that a trial court is free to depart from the said sentence. Indeed, the East African Court of Appeal in *Opoya v Uganda* (1967) EA 752 at page 754 paragraph B explained this as follows:

“It seems to us beyond argument the words “shall be liable to” do not in their ordinary meaning require the imposition of the stated penalty but merely express the stated penalty which may be imposed at the discretion of the court. In other words, they are not mandatory but provide a maximum sentence only and while the liability existed the court might not see fit to impose it.”

10. Flowing from the above cited decision, it is a well-established principle that sentencing must be determined based on legally established principles. In Kenya, sentencing is governed by the [Judiciary](#)



Sentencing Policy Guidelines, 2016 which sets out the objectives of sentencing under paragraph 4.1 at page 15 as follows:

“Sentences are imposed to meet the following objectives:

- a. Retribution: To punish the offender for his/her criminal conduct in a just manner.
- b. Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
- c. Rehabilitation: To enable the offender reform from his criminal disposition and become a law abiding person.
- d. Restorative justice: To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims’, communities’ and offenders’ needs and justice demands that these are met. Further, to promote a sense of responsibility through the offender’s contribution towards meeting the victims’ needs.
- e. Community protection: To protect the community by incapacitating the offender.
- f. Denunciation: To communicate the community’s condemnation of the criminal conduct.”

11. The principle that emerges from the above text is that, in passing a sentence, a court of law must bear the above objectives in mind and ensure that any sentence imposed meets any or all of the above objectives. Courts should, at the same time, consider mitigating circumstances and balance the rights of a convicted person with those of the victim alongside other mitigating factors. Some of these mitigating factors are: whether the convicted person is a first offender, whether they pleaded guilty and whether they are remorseful.
12. I have reviewed the circumstances of this case and the fact that the Applicant was not a first offender. I have also taken note of the fact that the pre-sentence report revealed that the Applicant’s first wife had died though their child was grown up. He remarried and got another child who was also grown up and also noted that he had burnt scars from burning himself after he had stolen from his uncle when he was underage. This therefore proves that the Applicant is truant in nature since he was young and despite being given chances to change, he has refused to change.
13. Based on the foregoing, it is my finding that the sentence meted out by the trial court was lenient considering the accused is not a repeat offender but a serial one. Therefore, the Application for review is unmerited and the same is dismissed.

**DATED, SIGNED AND DELIVERED BOTH VIRTUALLY AND PHYSICALLY ON THIS 4<sup>TH</sup> JUNE, 2025.**

**HON. T. W. OUYA**

**JUDGE**

For Applicant ..... Absent

For Respondent ..... P. Mwangi



Court Assistant ..... Jackline

