



REPUBLIC OF KENYA



KENYA LAW
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**Gikundi v Republic (Criminal Revision E036 of 2023)
[2025] KEHC 9924 (KLR) (7 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 9924 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL REVISION E036 OF 2023**

SM GITHINJI, J

JULY 7, 2025

**IN THE MATTER OF REVISION UNDER SECTION 362
AND 364 OF THE CRIMINAL PROCEDURE CODE.**

BETWEEN

GEORGE GIKUNDI APPLICANT

AND

REPUBLIC RESPONDENT

JUDGMENT

1. The applicant herein one George Gikundi, was charged together with others in the lower court, in Criminal Case No. 1542 of 1999 with two counts of Robbery with violence, contrary to Section 296(2) of the *Penal code*. Upon full trial, he was found guilty on both counts and sentenced to death. Dissatisfied with the said conviction and sentence he appealed to the High Court in HCCRA No. 180 of 2001 where the appeal was dismissed. He did not prefer an appeal to the Court of Appeal. However, later on the death sentence was commuted to life imprisonment by the third President of the Republic of Kenya, Hon. Mwai Kibaki
2. The applicant avers that, life imprisonment given the circumstances of his case, is harsh and excessive. He asserts that he is a first offender who for the 24 years he has been in prison, is fully rehabilitated and has certificates. He urges this court to consider the period served and review the sentence to a non-custodial sentence.
3. The Respondent opposed the Application on the grounds that the sentence meted is legal and proper; during the trial the applicant's fundamental rights were not violated; the issue of his reform is within the ambit of prison authorities in the process of exercise of the prerogative power of Mercy; and that the application lacks merit and should be dismissed.



4. Having weighed the application, the issue which emerges for determination is whether this court has jurisdiction under Sections 362 and 364 of the Criminal Procedure Code to review the impugned life imprisonment sentence.

Section 362 of the CPC reads:-

“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.

364.

(1) ; -

In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may-

(a)

(b)

(2)

(3)

(4)

(5) 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. The foregoing Sections makes it vivid that the actual powers the High Court may exercise upon revision, such as enhancing or reducing sentence, quashing proceedings, etc; only relates to matters arising from Subordinate Courts and not matters determined by another Judge of the High Court. A High Court Judge cannot revise the decision of another Judge of coordinate jurisdiction. The appropriate remedy against a judgment or sentence of a High Court Judge is by way of appeal to the Court of Appeal. In Joseph Nduri Mhuri v Republic [2019] eKLR, the Court of Appeal reaffirmed that:-

“A Judge of the High Court has no jurisdiction to sit on appeal or in revision over the decision of a Judge of the same Court”

6. The applicant herein having appealed against the conviction and sentence by the lower court to the High Court, and the appeal having been dismissed, he is out of jurisdiction step to have referred a revision to this court, of the said decision. He should have simply gone to the Court of Appeal.
7. Once the President steps in with a commutation as he did in this case, the convicted sentence becomes a new kind of executive- imposed penalty, and not a judicial one. Thus, judicial oversight under Sections 362 and 364 of the CPC doesn't apply. After commutation, judicial review becomes overtaken by events.



8. Though not entirely relevant given the foregoing considerations, I wish spare a moment and say something in relation to the impugned life imprisonment.
9. The applicant was convicted on two counts of Robbery with violence, an offence which carries mandatory death sentence. Given that the committed offences of grave nature were two rather than one; this is an aggravating factor- which does not invite the court to met a lenient sentence.
10. As well argued by the Respondent in their Response to the application, the Supreme Court made it clear in *Republic v Evans Nyamari Ayako*, Petition No. E002 of 2024, that life imprisonment means exactly that, life imprisonment. It held at Paragraph 47 of the judgment that: -

“In view of the foregoing, we find that the Court of Appeal ought not to have proceeded to set a term sentence of thirty (30) years as a substitution for life imprisonment, as the effect would be to create a provision with the force of law while no such jurisdiction is granted to it. The term of thirty years was arrived at arbitrarily without involvement of parliament and the people. In consequence, we find that the Court of Appeal ventured outside its mandate and powers”

11. The doctrine of finality in litigation,

“*Interest reipublicae ut sit finis litium*” meaning it’s in the public interest that there be an end to litigation, underscores the importance of concluding legal disputes so that parties can move on with certainty and closure. This principle is closely tied to public interest, judicial economy, and the rule of law. In *Uburu Highway Development Ltd v Central Bank of Kenya & 2 Others* [1996] eKLR, the Court of Appeal emphasized:

“There must be an end to litigation. Parties cannot be allowed to litigate the same issue over and over again under different causes.”

12. Given the foregoing consideration, Its crystal clear that the Application lack merit and hereby dismissed.

DATED AND DELIVERED AT MERU THIS 7TH JULY, 2025

S.M. GITHINJI

JUDGE

Appearances:-

Applicant present in Nyeri Maximum Prison.

Ms. Adhi for the state.

