



**Mwiti v Republic (Criminal Revision E080 of 2024)
[2025] KEHC 13224 (KLR) (Crim) (24 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13224 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ISIOLO
CRIMINAL
CRIMINAL REVISION E080 OF 2024
SC CHIRCHIR, J
SEPTEMBER 24, 2025**

BETWEEN

SILAS MWITI APPLICANT

AND

REPUBLIC PROSECUTION

RULING

1. The Applicant’s Application dated 29th July, 2024, seeks for review of sentence. He prays that his sentence of 5 years, be reduced to a non- custodial one, and that he be allowed to serve the remaining period under community service.
2. He states that he pleaded guilty at the first instance; that he was a first offender, and he promises not to repeat the offence. He pleads to be given a chance to go back, and take care of his family.
3. The respondent opposes the application, through the prosecution’s counsel’s Affidavit sworn on 21st May 2025. The respondent states that the applicant was given a chance to mitigate, and the court did consider his mitigation; That it has not been demonstrated that the trial magistrate acted on wrong principles of law. It is finally stated that there has been no valid reason advanced to warrant a revision.

Determination

4. The High Court jurisdiction on revision is set out under section 362 to 367 of the Criminal Procedure Code (CPC), and the mandate as set out under Section 362 of CPC, is to ascertain the legality, correctness or propriety of any order, sentence passed by the subordinate court, or proceedings.
5. Section 306 of the Penal Code, being the section under which the applicant was charged, attracts a maximum penalty of 7 years. In sentencing the Applicant to 5 years imprisonment, the court considered that he was a repeat offender. The Applicant had been discharged about a month earlier,



following a conviction in a related offence, in Isiolo chief Magistrate's court criminal case No. E532 of the 2022. In this regard, the applicant's submissions that he was a first offender is not true. The trial court also considered the fact that the he had pleaded guilty immediately upon taking plea.

6. I agree with the respondent that there was nothing illegal or incorrect about the sentence, as it was in compliance with the law. I also agree with the trial magistrate that, in view of the repeated conduct, the applicant needed a deterrent sentence. However, am equally of the view that, a lesser, albeit custodial sentence, would have achieved the same purpose. I consider a sentence of 5 years against a maximum of 7 years to have been rather harsh.
7. Thus, while there is nothing incorrect or illegal about the sentence as aforesaid, I find it to have been inappropriate in the circumstances of this case.
8. In view of the foregoing, the sentence of 5 years is hereby set aside, and substituted with 3 years. The sentence is deemed to have taken effect from 26/11/2022 being the date when the Applicant was arrested.

DATED, SIGNED AND DELIVERED AT ISIOLO THIS 24TH DAY OF SEPTEMBER, 2025.

S. CHIRCHIR

JUDGE.

In the presence of:

Roba Katelo- Court Assistant

The Applicant

M. B. Ngetich – For the Respondent.

