



**Ndungu v Republic (Miscellaneous Criminal Application  
E042 of 2022) [2023] KEHC 1928 (KLR) (10 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 1928 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
MISCELLANEOUS CRIMINAL APPLICATION E042 OF 2022**

**MM KASANGO, J  
MARCH 10, 2023**

**BETWEEN**

**JAMES GICHURU NDUNGU ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. James Gichuru Ndungu by this action seeks to invoke this court’s supervisory power to have his sentence of 35 years imprisonment reviewed.

**Background**

2. The applicant was charged before Githunguri Magistrate’s Court Criminal Case No 907 of 2004 with the offence of causing grievous harm contrary to section 234 of the *Penal Code*. The evidence adduced during the trial was that the applicant worked as a mechanic at Kagwe Market in Kiambu together with Permenus Gathuru Chege and Elijah Maina Ngige. On July 24, 2003, the applicant had a disagreement with the two co-mechanics. The disagreement almost erupted into a physical fight but it did not.
3. Later that evening, the applicant and the two co-mechanics were at a bar taking some drinks. The applicant assured his co-mechanics that there were no hard feelings. Soon thereafter, the applicant left the bar, leaving his co-mechanics there. The applicant returned to the bar with his hands held to his back. On reaching where the co-mechanics were, the applicant poured on them a liquid substance. That substance was acid. The effects of that acid is well explained from the testimony of one of the two co-mechanics who said:-

“He came to the table carrying something from the rear. I was not able to see what it was. He pretended to go for his sit when he pulled his hand – right hand from the rear and he threw



some substance to me. The liquid was thrown on my face. I felt pain. There was smell and smoke which followed. My eyes were closed. I started asking for water ...

I was taken to some hospital. One eye opened but not the other. To date, the right eye has never opened. It closed permanently. I was taken to Kenyatta National Hospital. I was admitted for 4 months.

My face burnt up. The water (substance) also burnt my chest and stomach.”

4. The other co-mechanic described the same injuries that he too suffered. He was admitted at Kenyatta National Hospital (KNH) for 3 months. The tattered clothes of the two co-mechanics that were burnt by the acid were produced at the trial.
5. The trial court convicted the applicant of the two counts of the offence of causing grievous harm and on March 29, 2005 and sentenced the applicant to 35 years imprisonment for each count. those sentences ere to run concurrently.
6. The trial court’ file, which is before me, shows that the applicant appealed against his conviction and sentence at High Court Nairobi Criminal Appeal No 172 & 176 of 2005. The trial court file does not hold a copy of the judgment in respect to that appeal.
7. The applicant has approached this court by an application filed on October 24, 2022. He seeks revision of his sentence on what he calls humanitarian grounds. He alleges, although there is no proof before me, that he is ailing with high blood pressure, diabetes and prostate cancer.
8. The present application not only lacks merit but the applicant having filed an appeal before the High Court, which judgment has not been availed to this court, I cannot consider the application which may amount to revision of High Court judge’s orders.
9. Bearing the facts surrounding the conviction of the applicant and because the applicant did appeal his conviction and sentence by the trial court, I find there is no merit in the application by James Gichuru Ndungu. The application is hereby dismissed.
10. I order this file be closed.

**RULING DATED, SIGNED and DELIVERED at KIAMBU this 10<sup>th</sup> day of MARCH, 2023.**

**MARY KASANGO**

**JUDGE**

Coram:

Court Assistant.....Mourice/Julia

Accused: No appearance

For DPP: Mr. Gacharia

**COURT**

Ruling delivered virtually.

**MARY KASANGO**

**JUDGE**

