



**Nthiga v Republic (Criminal Revision E033 of 2023)
[2023] KEHC 3112 (KLR) (13 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3112 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
CRIMINAL REVISION E033 OF 2023**

LW GITARI, J

APRIL 13, 2023

BETWEEN

PETER MURIITHI NTHIGA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. This ruling is in respect of the application filed on February 15, 2023. The brief facts of this matter are that the Applicant herein was initially arrested and charged in Criminal Case No 14/2020 at Chuka High Court for the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. He was tried, found guilty, convicted and sentenced to serve 20 years' imprisonment. The applicant is now seeking the review of the sentence with a lenient sentence. The application is premised on the grounds on the following grounds:
 1. That, the applicant committed the offence out of ignorance hence he is now regretful and remorseful that the offence occurred.
 2. That, may this honourable court be pleased to consider the applicant's conduct through application of Section 216 and 329 of the *Criminal Procedure Code* thus to inform itself as to the proper order to pass.
 3. That, during the trial of this case the applicant pleaded guilty in mitigation whereby the trial judge did not consider that the applicant was the husband to the deceased and there was no problem between the two partners. They quarreled and immediately the applicant stabbed his wife with a knife without the intention to kill his loved one.
 4. That, during the trial, the applicant's mitigation was not considered due to manslaughter but to murder act nature of the sentence under Section 234 of the *Penal Code*.



5. That, since the applicant was committed to prison he has rehabilitated by undergoing various programs of industrial duties like making furniture in a new modern way hence ready to contribute to the building of the nation.
 6. That, the applicant prays this honourable court to allow this application and grant other orders on the imposed harsh sentence to a lenient sentence which deems fit for manslaughter.
 7. That, the applicant prays this honourable court to consider the fact that the wife died and the husband is imprisoned to serve 20 years and their children are now on their own in the world of problems and they need parental care and protection.
 8. That, the applicant prays this court considers the fact included in my children who are rendered now out of school due to school fee issues and proper home basic needs as it required under Article 53(1) (e) of the [Constitution of Kenya 2010](#) .
 9. That, no cost to this application as the applicant is a pauper and has no money.
2. The application is opposed by the Respondent vide its Grounds of Opposition dated March 13, 2023. It is the Respondent's case that the content of the application is for resentencing but has been brought in the guise of review. According g to the Respondent, the Applicant ought to have appealed against the sentence if he was not satisfied with the findings of the court. That the application should therefore be dismissed for being frivolous, vexatious, and a complete abuse of the court process.
 3. I note that the application is stated to be that of sentence review. The Applicant urged this court to consider the application in view of the provisions of Section 216 and 329 of the [Criminal Procedure Code](#).
 4. Section 216 of the [Criminal Procedure Code](#) provides that:

“The court may, before passing sentence or making an order against an accused person under section 215, receive such evidence as it thinks fit in order to inform itself as to the sentence or order properly to be passed or made.”
 5. Section 329 of the [Criminal Procedure Code](#) states:

“The court may, before passing sentence, receive such evidence as it thinks fit in order to inform itself as to the proper sentence to be passed.”
 6. The above provisions are not in tandem with the orders sought in the present application as the Applicant has already been sentenced. They therefore do not apply in this case.
 7. 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.”
8. 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. Article 165(6) of the Constitution entrenches the jurisdiction of this court which is exercised by way of revision over the sub-ordinate 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.”

9. In this case, 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.

In this matter the case was determined by means of a plea 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 and received and considered his mitigation. In compliance with Section the court called for a Probation Officer’s report. The Court then exercised discretion and passed the sentence.

The application for the review of the sentence is not properly before this court. In the end I order as follows:

1. The application lacks merits.
2. The application is dismissed.

Dated, signed and delivered at Chuka this 13th day of April 2023.

L.W. GITARI

JUDGE

