



**Ochoro v Republic (Criminal Revision E154 of 2023)
[2023] KEHC 3188 (KLR) (Crim) (17 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3188 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL
CRIMINAL REVISION E154 OF 2023**

LN MUTENDE, J

APRIL 17, 2023

BETWEEN

JAMES OCHORO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. James Ochoro, the applicant, was charged and convicted for the offence of causing grievous harm contrary to section 234 of the *Penal Code* and was subsequently sentenced to serve 4 years imprisonment, a sentence that was ordered to run from the date of the applicant's incarceration, the May 23, 2022.
2. Through an application dated January 16, 2023, he seeks review of the sentence. He mitigates that he has reformed and urges that he is a family man with 3 children, but, one of them has since died.
3. The application is opposed by Ms Chege, learned prosecuting counsel for the state, who argues that the applicant has not demonstrated any illegality or incorrectness of the sentence.
4. That the applicant ought to have appealed and that there were aggravating circumstances on the way the offence was committed.
5. The provisions of section 362 of the *Criminal Procedure Code* (CPC) set out the court's revisionary jurisdiction. The jurisdiction is limited and only applies where the court determines the incorrectness, illegality or impropriety of the subordinate court orders.



6. The court also has power to rectify errors and omissions on the face of the record. The stated provision of the law provides that:

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.

7. In the case of *Republic v Milka Jerobon Chumba* (2017) eKLR the court held that: -

“The jurisdiction of the High court on revision is not unlimited. Section 362 and section 364 of the *Criminal Procedure Code* when read together leave no doubt that the court can only exercise its revisionary jurisdiction if it is satisfied that there was an illegality, incorrectness, irregularity, mistake or impropriety in the decision, sentence or order sought to be reviewed.”

8. Section 364 (5) of the CPC further provides that:

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.

9. This means that the revision should not be invoked in substitution of an appeal although this applies on a case to case basis and should not be used to fetter the High Court’s discretion to determine an issue on revision.

10. In the case of *Njuguna Mwangi & another v Republic* (2018) eKLR the court opined that it is trite that exercise of revisionary orders by the High Court is a matter of judicial discretion which must be exercised judicially by the court within the confines of section 362 and 364 (1) of the CPC and not a substitution to institution of an appeal.

11. In the case of *Republic v John Wambua Munyao & 3 others* [2018] eKLR the court held that:

“Where an issue arises as to whether the decision of the court below is correct in its merits either as a result of wrong exercise of discretion or otherwise, but which decision does not call into question, its legality, correctness or propriety, the right approach is to appeal against the same preferably at the conclusion of the proceedings or in limited instances before then.”

12. Section 234 of the *Penal Code* enacts that.

Any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for life.

13. This means that the sentence meted out was legal; therefore, taking into consideration aggravating circumstances in which the offence was committed, the sentence was not harsh or excessive and was well within the confines of section 234 of the CPC.

14. The power of sentencing being discretionary, going into the merit of the decision of the lower court which sentenced the applicant to four (4) years imprisonment is a ground for appeal, not, revision.

15. The upshot of the above is that the applicant having not questioned the legality or correctness of the sentence, this application lacks merit. Accordingly, it is dismissed.

16. It is so ordered.



DATED, SIGNED AND DELIVERED VIRTUALLY
THROUGH MICROSOFT TEAMS AT NAIROBI,
THIS 17TH DAY OF APRIL, 2023.

L. N. MUTENDE

JUDGE

IN THE PRESENCE OF:

Applicant

Ms. Chege for the State

Court Assistant – Mutai

