



REPUBLIC OF KENYA



KENYA LAW
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**Odhiambo v Republic (Criminal Application E004 of 2025)
[2025] KEHC 13295 (KLR) (15 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13295 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CRIMINAL APPLICATION E004 OF 2025
WM KAGENDO., J
SEPTEMBER 15, 2025**

BETWEEN

MANFRED OTIENO ODHIAMBO APPLICANT

AND

THE REPUBLIC RESPONDENT

(Revision of sentence in HCCR. Case No. 45 of 2015 at Mombasa on 11th August, 2021 and Court of Appeal Cr. Appeal No. E013 of 2023 delivered on 24th May, 2024 at Mombasa)

RULING

1. By way of a Notice of Motion dated 27th January, 2025 erringly brought under Sec 47 (1) of the *Appellate Jurisdiction Act*, and Section 397 of the CPC (both provisions non-existent) the applicant urged this Court to review the sentence of 25 years imprisonment imposed on him on 11th August, 2021 in Mombasa Hight Court Criminal case No. 45 of 2015 and upheld in Court of Appeal Criminal Appeal No. E013 of 2023 on 24th may, 2024, to a non-custodial sentence based on medical grounds.
2. The background is that the applicant was charged, convicted and sentenced for the offense murder contrary to sec 203 as read with sec 204 of the Penal Code by this court, differently constituted. Aggrieved by both conviction and sentence, he appealed to the Court of Appeal, where the learned bench Murgor, Laibuta and Odunga JJ.A. upheld the conviction and the sentence.
3. The instant application is propped on grounds that the applicant was diagnosed with a medical condition known as Aggressive Spinal Cord Pathology compounded by the fact that he is HIV positive. That, the condition has been very traumatizing owing to the strain in accessing medication and he cannot perform even the most basic chores like personal hygiene and movement, where he relies on other inmates for such purposes.



4. In support of his application he produced a medical report from the Coast General teaching and Referral Hospital dated 7th January, 2025 by Dr. Abdullah Aden, which report indicates that the applicant indeed suffers from aggressive spinal cord pathology.
5. The State Department for Correctional Service, through the Officer in Charge Shimo La Tewa Maximum Security Prison, wrote the applicant's progressive report, where it was recorded that in his period of incarceration the applicant has acquired certificates in Bible Studies (Diploma) and a Certificate in Health Education. Further, he has exhibited good behavior and remorse and recommended that due to his medical condition it may be necessary to consider a review of his sentence.
6. Equally a Sentence Review Report was undertaken and produced in court on 12th February, 2025, where Mr. S. Musyoka, the Community Service Officer, upon interviewing the applicant's family, the prison's authorities and the Investigative officer in the primary matter, noted that the applicant has no record of prison misconduct, his family is conducive for his reintegration as they are willing to attend to his medical needs.

Analysis and Determination

7. This court observes that the pleadings filed by the Applicant were not properly in so far as their relevant foundational provisions of law are concerned. However, the court takes judicial notice that the Applicant is unrepresented and serving sentence without access to facilities to present his case. It is sufficient that the court was able to make out that the Applicant wished to have his sentence reviewed.
8. Simply put the issue for determination in the application herein is whether this Court should review the sentence of this Court differently constituted.
9. It is apparent that the basis of this application is primarily on the applicant's health which is his right under Article 43 of *the Constitution* on economic and social rights.
10. Article 50 (2) (p) (q) of the COK provides for the rights of an accused person including: -
...
 - “(p) to the benefit of the least severe of the prescribed punishments for an offence, if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing; and
 - q. if convicted, to appeal to, or apply for review by, a higher court as prescribed by law.”
11. This court's revisionary jurisdiction is provided for under Section 362-368 of the Criminal Procedure Code.
 - “362. 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. in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 354, 357 and 358, and may enhance the sentence;
 - b. in the case of any other order other than an order of acquittal, alter or reverse the order.”

12. As provided above, the High Court can only undertake criminal revision of the decisions of a subordinate court and not of a superior court. Needless to reiterate, the applicant had previously appealed the trial court’s decision before the Court of Appeal, which conviction and sentence was upheld.

13. In the case of *Daniel Otieno Oracha vs Republic (2019) eKLR*, the Petitioner had applied for review of a sentence imposed by a court of concurrent jurisdiction and *Aburili J.* held that:-

“The law abhors that practice of a judge sitting to review a judgment or decision of another judge of concurrent jurisdiction. Reduction of sentence could only be considered by the Court of Appeal or if this court was sitting on appeal of a judgment of the subordinate court or if the petitioner was seeking for resentence after exhausting appeal mechanisms and not otherwise...

...

Good governance demands that cases be handled procedurally in the right forum...”

14. Similar positions were held in *Lawrence Kariuki Njeru v Republic [2017] KEHC 3304 (KLR)*, in *John Kagunda Kariuki v Republic [2019] KEHC 5480 (KLR)*, and recently in *WSC v Republic (Miscellaneous Criminal Application E013 of 2021) [2025] KEHC 192 (KLR)* where the court held that;

“This court has already determined the Applicant’s Appeal and upheld his conviction and sentence. The Court of Appeal thereafter dismissed his Appeal. In as much as this court empathizes with the plight afflicting the Applicant’s family, this court has no jurisdiction to resentence the Applicant.”

15. The rule of the thumb is that courts in general cannot sit in review/appeal over decisions of their peers of equal and competent jurisdiction much less those courts higher jurisdiction than themselves. This court empathizes with the applicant’s plight, but his refuge unfortunately does not lie before this court as it is bereft of jurisdiction to review the said sentence.

16. Accordingly, the application is hereby dismissed for want of jurisdiction.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI VIRTUALLY THIS 15TH DAY OF SEPTEMBER. 2025.

W.K. MICHENI JUDGE



In The Presence Of;

For The Applicant(s).....in Person.....

For The Respondent...Mr Sirima.....

Court Assistant.....Ms Bebora.....

Signed By/for:

HON. LADY JUSTICE WENDY MICHENI

THE JUDICIARY OF KENYA.

MOMBASA HIGH COURT

HIGH COURT CRIMINAL

DATE: 2025-09-25 11:20:41

