John v Republic (Miscellaneous Application E060 of 2024)
[2025] KEHC 14842 (KLR) (15 October 2025) (Ruling)

Neutral citation: [2025] KEHC 14842 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT CHUKA

MISCELLANEOUS APPLICATION E060 OF 2024

RL KORIR, J

OCTOBER 15, 2025

BETWEEN

JAMES MUGAMBI JOHN ..... APPLICANT

AND

REPUBLIC ..... RESPONDENT

RULING

1. James Mugambi John [Applicant] was charged with the offence of grievous harm contrary to section 234 of the Penal Code. The victim of this offence was his half- brother one Alex Kimathi

2. At the conclusion of the trial, he was convicted and sentenced to serve 5 years' imprisonment by Hon. D.A Ocharo on 2nd October, 2024.

3. The Applicant has now approached this court through the present undated miscellaneous application received in court on 28th October, 2024. The Application seeks a reduction of his sentence or a non-custodial sentence.

4. The Applicant has listed in the grounds that the court has judicial power to review his sentence; that he has learnt his lesson; that he was asthmatic and required constant care by a doctor; and; that he was a family man whose wife and children depended on

5. The Application is supported by the Applicant's undated sworn affidavit whose averments mirror the grounds aforestated.

6. The Respondent opposed the Application through written submissions.

7. At the hearing of the Application on 24th April 2025, the Applicant urged his Application through oral submissions. He told the court that he had young children who depended on him and that his prayer was to be granted a non-custodial sentence so that he could go and take care of them.

8. The Respondents relied on their written submissions dated 28th April 2025. In opposition to the Application, submitted that the sentence meted by the trial court was legal, just and fair. That the trial court considered all relevant factors and arrived at a lenient sentence of 5 years' imprisonment.

9. On the Applicant's prayer for a non-custodial sentence, the Respondents submitted that Section 364 of the Criminal Procedure Code granted the court power upon revision to increase, reduce or alter the nature of the sentence. That, however the Applicant was not deserving a non-custodial sentence owing to the seriousness of the offence.

Analysis and Determination

10. This court's revisionary jurisdiction is granted by Section 362 of the Criminal Procedure Code which provides:-

> " 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."

11. In the case of Joseph Nduvi Mbuvi v Republic [2019] eKLR, Odunga J. [as he then was] expounded the exercise of the revisionary jurisdiction thus:-

> " In my view, the revisionary jurisdiction of the High Court should only be invoked where there are glaring acts or omissions but should not be a substitute for an appeal. In other words, parties should not argue an appeal under the guise of a revision. It is for this reason that the decision whether or not to hear the parties or their advocates is discretionary save for where the orders intended to be made will prejudice the accused person. As was stated by the High Court of Malaysia in Public Prosecutor v Muhari Bin Mohd Jani And Nother [1996] 4 LRC 728 at 734, 735:-
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> > " The powers of the High Court in revision are amply provided under Section 325 of the Criminal Procedure Code subject only to subsection [ii] and [iii] thereof. The object of revisionary powers of the High Court is to confer upon the High Court a kind of "paternal or supervisory jurisdiction in order to correct or prevent a miscarriage of justice. In a revision the main question to be considered is whether substantial justice has been done or will be done and whether any order made by the lower court should be interfered with in the interest of justice..... If we have been entrusted with the responsibility of a wide discretion, we should be the last to attempt to fetter that discretion..... This discretion, like all other judicial discretions ought, as far as practicable, to be left untrammeled and free, so as to be fairly exercised according to the exigencies of each case."

12. In this case I called for and examined the trial record.

13. The record shows that the Applicant was tried and convicted of the offence of grievous harm and convicted to serve 5 years' imprisonment. The record further shows that he pleaded not guilty and a trial ensued in which both the prosecution and the defence presented witnesses. The court in its reasoned judgement dated 2nd October 2024 entered a verdict of guilty.

14. The record further shows that the Applicant offered his mitigation. He pleaded for mercy stating that he had school going children who depended on him.

15. In sentencing the Applicant, the court stated thus:-

> " I have considered that the accused person is a first offender. I have also noted that he has children who depend on him. However, he extended the offence in a very heinous and callous manner. He cut the victim with a panga numerous times, on the head and the surrounding area. That was barbaric and inhuman. I sentence him to serve five years in prison. 14 days right of appeal explained."

16. After my consideration of the record, I have found nothing irregular in the proceedings. The record shows that a normal procedural trial was conducted.

17. On sentence, section 234 of the Penal Code provides:

234.

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

18. The Applicant was sentenced to 5 years' imprisonment for the heinous and barbaric attack on his half-brother. It is the view of this court that the sentence was lenient. I also observe that the offence was committed within the family and no attempt has been made by the Applicant to demonstrate any effort towards reconciliation and peaceful co-existence with the victims of the offence. There is nothing to show that he qualifies for a consideration for a non-custodial sentence.

19. In the end, I have found no merit in the Application. It is dismissed.

RULING DELIVERED, DATED AND SIGNED AT CHUKA THIS 15TH DAY OF OCTOBER, 2025.

R. LAGAT - KORIR

JUDGE

Ruling delivered in the presence of Applicant acting in person, Ms Rukunga for the Republic; Muriuki [Court Assistant]