REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

CRIMINAL REVISION E084 OF 2025

PETER OMANYALA MUSUNDI..... . . . .APPLICANT

VERSUS

REPUBLIC..... .....RESPONDENT

RULING

BACKGROUND

1. The applicant herein, Peter Omanyala Musundi, was charged, tried, convicted, and initially sentenced to death for the offence of robbery with violence contrary to section 296(2) of the Penal Code (Cap 63 Laws of Kenya) in Sirisia SRM Criminal Case No. 941 of 2017. He was also convicted of rape contrary to section 3(l)(a)(b)(3) of the Sexual Offences Act No. 3 of 2006, but the sentence was held in abeyance due to the imposition of the death penalty.
2. Being dissatisfied with the decision of the trial court, the applicant lodged an appeal in Bungoma HCCA No. 40 of 2018. The appeal on conviction was dismissed, but the High Court substituted the death sentence with a custodial term of twelve (12) years' imprisonment, which was to run from the date of judgment delivered on 17th February 2020.
3. The applicant subsequently preferred a revision application vide Bungoma HCMISC.A No E097 of 2024 where his

application was heard and dismissed on 26th March 2025 by my sister Justice Rose Ougo.

4. The applicant has now moved this court yet again by way of revision, seeking a further review of his sentence.

APPLICATION

5. The applicant prays that this court revises the twelve-year sentence imposed, arguing that it is still excessive given the circumstances. He urges the court to consider the time spent in custody since his arrest on 28th November 2017, his status as a first offender, and the fact that the injuries sustained by the complainant were not life-threatening.
6. The application is supported by an affidavit sworn by the applicant wherein he reiterates the above grounds and craves for leniency. He also invokes Section 333(2) of the Criminal Procedure Code, arguing that the period he spent in pre-trial custody ought to be taken into account.
7. This court is clothed with revisionary powers under Section 364 of the Criminal Procedure Code and Article 165(6) & (7) of the Constitution of Kenya, 2010.

   Section 364 provides that:

   "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...

(b) in the case of any other order other than an order of acquittal, alter or reverse the order..."
Similarly, Article 165(6) & (7) grants this court supervisory jurisdiction over subordinate courts and tribunals.

ANALYSIS

8. I have carefully considered the application, the original trial record, and the judgment delivered by Hon. J.M. Bwonwong'a in HCCA No. 40 of 2018. The learned Judge already exercised discretion to set aside the death penalty and imposed a custodial sentence of twelve years after considering both aggravating and mitigating factors.
9. As aforesaid a similar application had already been determined by a court of equal jurisdiction to this court in Bungoma High Court Criminal Miscellaneous Application No E097/2024. This court is thus functus officio as a similar application had already been determined. I cannot seat on appeal of the decision of my sister Justice Rose Ougo.

CONCLUSION

10. Accordingly, this application is hereby dismissed in its entirety.
11. This file is marked as closed.

DATED and DELIVERED at Bungoma this 24th day of October, 2025.

M.S. SHARIFF

JUDGE