



**Njeru v Republic (Criminal Miscellaneous Application E228 of 2024)
[2025] KEHC 15203 (KLR) (23 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15203 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CRIMINAL MISCELLANEOUS APPLICATION E228 OF 2024
WM KAGENDO., J
OCTOBER 23, 2025**

BETWEEN

GERALD MAJIRA NJERU APPLICANT

AND

THE REPUBLIC RESPONDENT

*(Revision of sentence in HCCR. Case No. 47 of 2017 at
Mombasa on 6th June, 2020 delivered by Hon. Njoki Ndung'u J)*

RULING

1. This Ruling follows a home-made application by the applicant seeking a review of the sentence meted against him of 15 years imprisonment imposed on him on 6th June, 2020 in Mombasa Hight Court Criminal case No. 47 of 2017.
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, but opted not to challenge the decision by way of appeal.
3. The instant application is propped on grounds proffered in its “supporting affidavit” and commensurate written submissions. He argued that the 15 years sentence was harsh and severe considering that he was a first offender and very remorseful and apologetic.
4. Further, the applicant submitted that he has since acquired transformative skills including tailoring and has since turned a new leaf as a professing Christian believer.
5. It is noteworthy that as at the time of making this determination no opposition to the application by the respondent was on record. Further, the State Department for Correctional Service had not filed an inmate progressive report. Equally a Sentence Review Report was not produced for this court’s appreciation of the applicant’s suitability or lack for a sentence review.



Analysis and Determination

6. The issue for determination in the application herein is whether this Court should review the sentence of an equal and competent jurisdiction.
7. 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.”
8. 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.”
9. As provided above, the High Court can only undertake its revisionary jurisdiction on the decisions of a subordinate court and not of a superior court.
10. 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...”

11. This was also held in *John Kagunda Kariuki v Republic* [2019] KEHC 5480 (KLR).
12. 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. 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.
13. Accordingly, the application is hereby dismissed for want of jurisdiction.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI VIRTUALLY THIS 23RD DAY OF OCTOBER 2025.

W.K. MICHENI JUDGE

In The Presence Of;

FOR THE APPLICANT in person FOR THE RESPONDENT. MR NGIRI COURT ASSISTANT BEBORA

Signed By/for:

HON. LADY JUSTICE WENDY MICHENI

THE JUDICIARY OF KENYA.

The Judiciary of Kenya

