



**Baithumbi v Republic (Miscellaneous Criminal Application
E006 of 2025) [2025] KEHC 17140 (KLR) (18 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17140 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
MISCELLANEOUS CRIMINAL APPLICATION E006 OF 2025**

**RL KORIR, J
NOVEMBER 18, 2025**

BETWEEN

PATRICK KIMATHI BAITHUMBI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant filed the present Application dated 17th January 2025 seeking to be granted a non-custodial of lenient sentence. He set out the grounds reproduced verbatim as follows:-
 - (i) That I was arrested on 3rd June 2020 and charged at Marimanti Law Court in Criminal Case No.440 of 2020 for an offence of Grievous Harm contrary to Section 234 of the Penal Code .
 - (ii) That after trial I was convicted as charged and sentenced to serve a 10 years imprisonment commencing from 25th February, 2021.
 - (ii) That I am very remorseful for my action and I will not commit any other offence and I am well behaved with no vicious tendencies.
 - (iv) That I am first offender, my family depends on my effort for survival.
 - (v) That I have two children who are in School.
 - (vi) That I am a changed person to the society, I have reformed and I have served a third of my sentence.
 - (vii) That this Hon. Court have mercy on me and grant me a non-custodial sentence for the remaining period of my sentence or reduce my sentence from 10 years.
 - (viii) That this Honourable court has the judicial powers under Article 23(1) of the Constitution in accordance to Article 165(3) (b) of the Constitution to hear and determine Applications/



Petitions for redress of a denial, violation or infringement of, or threat to a right or fundamental freedom in the Bill of Rights.

- (ix) That this Honourable court gives any other orders that deem just in circumstances of this Petition.
2. The Applicant filed a Supporting Affidavit whose averments mirror the grounds already set out above. Further he stated that he had already served a third of his sentence and was sufficiently rehabilitated. He undertook not to commit any other offence.
3. The Respondent opposed the Application through Submissions dated 23rd April, 2025 and filed on 16th of July 2025. The gist of the Respondent's submissions was that the Application was not merited as failure by the trial court to explicitly state that it had taken into account the pre-trial custody did not invalidate the sentence. That the trial court had exercised discretion and considered all factors in arriving at the sentence; and that an appellate court in exercising discretion to interfere with sentence must be guided by established legal principles and doctrine.
4. The Respondent further submitted that the Applicant had filed an appeal which was heard and dismissed by Justice Gitari on 10th of August 2023. That the court having rendered itself on the appeal was now *functus officio* and could not be invited to relitigate the case.
5. At the hearing of an Application on 17th July, 2025 the Applicant made oral submissions. He submitted that his prayer was for the court to reduce his sentence. He stated that he was now rehabilitated and had accepted his conviction.

Analysis and Determination:

6. The Applicant was tried, convicted and sentenced by Hon. SM Nyaga (SRM) He was sentenced to serve 10 years' imprisonment. As per the procedure provided by Section 362 of the [Criminal Procedure Code](#), I called for and examined the trial record. Section 362 provides:-

“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.”
7. *Prima facie* there was nothing irregular about the Applicant's trial proceedings. Indeed, the Applicant has no complaint regarding the proceedings. With respect to sentence, the Applicant prayed that his sentence be reduced as he was now rehabilitated and had accepted his conviction.
8. My perusal of the record shows that the Applicant was charged on 6th July, 2020 and was granted a cash bail of Kshs.10,000/- or security bond of Kshs.20,000/-. He was therefore not in pre-trial custody.
9. At the conclusion of the trial, he was sentenced on 25th February, 2021 to serve 10 years' imprisonment.
10. The record further shows that the Applicant was dissatisfied with the conviction and sentence and appealed to the High Court in HCCRA No. E009/2022. His appeal was heard and determined by Shariff J, (not Gitari J as submitted by the Respondent) who found no merit in the appeal and upheld both conviction and sentence. The judgement which the Applicant has not disclosed, was dated 10th August, 2023.



11. The only issue therefore is whether this court can re-open or review a sentence confirmed by a court of equal and concurrent jurisdiction.
12. In this case, the Applicant's appeal was heard and disposed of by the High Court, differently constituted. I agree with the Respondents' submission that this Court having heard and disposed of the Applicant's appeal, was now *functus officio*.
13. As this Court has stated time and again, it is not proper for one court to revise the sentence meted out by a court exercising equal jurisdiction.
14. The Appellant's recourse was to appeal the high court's decision to the Court of Appeal. I am persuaded by the case of *Lawrence Kariuki Njeru vs. Republic* [2021] eKLR where Njuguna J. held that:-

“.....Further this court is bereft of jurisdiction to review the said judgement as doing so would be tantamount to sitting as an Appellate court on the judgement of the learned Judge and which act the law abhors.

The Petitioner ought to ventilate the issue on the resentencing and/or excessive sentence at the Court of Appeal.....”

15. In the end, it is my finding that the Application lacks merit and is dismissed.

Orders accordingly.

RULING DELIVERED, DATED AND SIGNED AT CHUKA THIS 18TH DAY OF NOVEMBER, 2025.

.....

R. LAGAT-KORIR

JUDGE

Ruling delivered in the presence of the Applicant acting in person and Ms Rukunga for the State; Muriuki (Court Assistant).

