Mohamed & 2 others v Republic (Criminal Application E035 of 2024) [2025] KEHC 17248 (KLR) (20 November 2025) (Ruling)

Neutral citation: [2025] KEHC 17248 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT GARISSA

CRIMINAL APPLICATION E035 OF 2024

JN ONYIEGO, J

NOVEMBER 20, 2025

BETWEEN

ABBAS ABDI MOHAMED .... 1ST APPELLANT

AHMED ABDI HASSAN .... 2ND APPELLANT

FARAH MOHAMED ALI .... 3RD APPELLANT

AND

REPUBLIC .... RESPONDENT

(Being a revision application against the sentence of Hon R. Aganyo (PM) delivered on 17.09.2023 in Criminal Case No. E312 of 2023 at Wajir Law Courts)

RULING

1. The appellants were jointly charged with two counts of the offence of grievous harm contrary to Section 234 of the Penal code as follows:
2. Count I: They were charged that on 27.09.2023 at Makaror in Wajir East Sub - County within Wajir County jointly with others not before court they unlawfully did grievous harm to Siyad Mohamed Abdi.
3. Count ii; They were charged that On 27.09.2023 At Makoror in Wajir East Sub-County within Wajir County jointly with others not before court they unlawfully did grievous harm to Osman Hassan Ahmed.
4. The trial magistrate found the applicants guilty of the two counts as charged. They were consequently convicted and sentenced to serve six (6) years imprisonment for each count and sentences to run concurrently.

5. Aggrieved by both the conviction and sentence, they lodged criminal appeal No. E035 of 2024 which was dismissed on 18-12-2024. Undeterred, they once again moved this court via a notice of motion dated 29-10-2025 seeking revision of sentence on grounds that they are entitled to resentencing hearing. They sought lenience based on the mitigation on record and that the sentencing be reduced to the period already served.

6. In response, prosecution opposed the appeal thus contending that the issue of sentence was addressed during the hearing of the appeal hence the court is functus officio.

7. I have considered the application herein and the response thereof. The law governing revision in a criminal case is captured under Section 362 and 364 of the CPC. Section 362 and 364 provides as follows;

> " 362. Power of High Court to call for records
>
> 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. Powers of High Court on revision
>
> (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.
>
> (c) in proceedings under section 203 or 296(2) of the Panel Code (Cap. 63), the *akn ke act 2012 30 Prevention of Terrorism Act* (Cap. 59B), the *akn ke act 1994 4 Narcotic Drugs and Psychotropic Substances (Control) Act* (Cap. 245), the Prevention of Organized Crimes Act (Cap. 59), the *akn ke act 2009 9 Proceeds of Crime and Anti-Money Laundering Act* (Cap. 59A), the *akn ke act 2006 3 Sexual Offences Act* (Cap. 63A) and the *akn ke act 2010 8 Counter-Trafficking in Persons Act* (Cap. 61), where the subordinate court has granted bail to an accused person, and the Director of Public Prosecution has indicated his intention to apply for review of the order of the court, the order of the subordinate court may be stayed for a period not

exceeding fourteen days pending the filing of the application for review.

(2) No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence:

> Provided that this subsection shall not apply to an order made where a subordinate court has failed to pass a sentence which it was required to pass under the written law creating the offence concerned.

3. Where the sentence dealt with under this section has been passed by a subordinate court, the High Court shall not inflict a greater punishment for the offence which in the opinion of the High Court the accused has committed than might have been inflicted by the court which imposed the sentence.

(4) Nothing in this section shall be deemed to authorize the High Court to convert a finding of acquittal into one of conviction.

(5) When an appeal lies from a finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed.

8. It is clear from the above provisions that an application for review of sentence can be entertained only for purposes of the court satisfying itself as to the correctness, legality or propriety of the proceedings. Section 364(5) of the CPC is emphatic that no application for revision should be entertained where an appeal lies from a sentence or order. This position was espoused in Criminal Revision number 194 of 2023 Kisii High court in the case of Barongo Sianyo Atembe vs Republic.

9. From the record, the court is merely being asked to exercise mercy on the applicants. They are not appealing against sentence nor conviction. It trite law that sentencing is at the discretion of the court and an appellate court can only interfere if the same is illegal, harsh or excessive or the trial court failed to take into account relevant factors or considered wrong legal principles.

10. The above position was stated succinctly by the Court of Appeal for East Africa in the case of OGOLA s o OWOURA VS REGINUM (1954) 21 270 as follows;

> " The principles upon which an Appellate Court will act in exercising its jurisdiction to review sentences are firmly established. The Court does not alter a sentence on the mere ground that if the members of the Court had been trying the appellant they might have passed a somewhat different sentence and it will not ordinarily interfere with the discretion exercised by a trial Judge unless, as was said in James V R., (1950) 18 E.A.C.A 147:
>
> > "It is evident that the Judge has acted upon some wrong principle or overlooked some material factor."
> >
> > To this we would also add a third criterion, namely, that the sentence is manifestly excessive in view of the circumstances of the case: R. V Sher shewky, (1912) C.C.A. 28 T.L.R. 364."

11. On the aspect of re-sentencing hearing, the principle was espoused by the supreme court in muruatetu case but only confined to murder cases and no other offences. In a nutshell, the application herein does not meet the threshold of a revision application. Having considered the aspect of sentence on appeal, this court has no jurisdiction to revisit the same issue again. I do agree with prosecution that the court is functus officio. Application is therefore dismissed for lack of merit.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 20TH DAY OF NOVEMBER 2025.

... .

J. N. ONYIEGO

JUDGE