



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA COUNTY

COURT NAME: MOMBASA HIGH COURT

CASE NUMBER: HCCRREV/E180/2025

QABALE DADACHA DABASO VS ODPP

RULING

1. The Applicant filed a Notice of Motion brought under Section 364 of the Criminal Procedure Code seeking revision of her sentence.
2. She seeks the following order:
 - i. That the sentence of five (5) years' imprisonment be reviewed and substituted with a non-custodial sentence.
3. The application is supported by the affidavit of the Applicant, Qabale Dadacha Dabaso.
4. She deposes that she was charged before Hon. Justice Andayi at the High Court in Mombasa with the offence of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code.
5. She states that she is a mother to a six-year-old girl who requires her parental guidance.
6. She further avers that her mother is elderly and unwell, and is unable to take care of herself or the Applicant's child.
7. The Applicant states that she has served six (6) months of her custodial sentence and has undertaken various rehabilitation programmes including beadwork and baking.
8. She expresses remorse for the incident that led to her conviction.
9. She states that she is contrite, regrets her actions and undertakes to be a law-abiding citizen.
10. The Applicant further states that she is a first offender and has never been involved in any other offence.
11. She prays that this Court revises her custodial sentence and grants her a non-custodial sentence.
12. I have considered the application, the supporting affidavit and the response by the State. The issue for determination is whether this Court has jurisdiction to review the sentence imposed by a judge of concurrent jurisdiction.
13. It is trite law that the High Court cannot review, vary or set aside a sentence imposed by



another judge of equal jurisdiction after the matter has been determined. This position is anchored in the doctrine of stare decisis and the hierarchical structure of the courts which safeguard consistency and finality in judicial decisions.

14. In *Republic v Karisa Chengo & 2 Others* (2017) eKLR, the Supreme Court affirmed that the High Court lacks jurisdiction to revisit or alter a sentence imposed by another High Court judge unless through an appeal to a higher court or a review specifically provided for in statute.
15. Similarly, in *Joseph Nduvi Mbuvi v Republic* (2019) eKLR, the Court of Appeal reiterated that one High Court judge cannot sit on appeal or review the decision of another judge of concurrent jurisdiction as it would undermine judicial orderliness and certainty.
16. On this basis, the Applicant's request for revision of the sentence cannot be entertained by this Court. Entertaining the application would, in effect, amount to sitting on appeal against a decision of a judge of concurrent jurisdiction. The Applicant's proper remedy lies in an appeal to the Court of Appeal as provided under Article 164(3) of the Constitution.
17. Accordingly, I find that the Notice of Motion dated 31st January 2025 lacks merit and the same is hereby dismissed.
18. I note, however, from the report on record that the Applicant has less than three (3) years of her sentence remaining. She may be considered under the prison decongestion programme scheduled for later in the year.
19. Orders accordingly.
20. **DELIVERED, DATED and SIGNED at MOMBASA this 27th day of NOVEMBER 2025.**
21. Ruling delivered through the Microsoft Teams online platform.

WENDY KAGENDO MICHENI
JUDGE

In the presence of:

...THE APPLICANT

...MR NGIRI FOR THE STATE

...MS BEBORA COURT ASSISTANT

SIGNED BY/FOR:
HON. LADY JUSTICE WENDY MICHENI



THE JUDICIARY OF KENYA.

MOMBASA HIGH COURT

HIGH COURT CRIMINAL

DATE: 2025-11-27 16:32:05

