



REPUBLIC OF KENYA



**Njeri v Republic (Criminal Miscellaneous Application E072 of 2025)  
[2025] KEHC 17671 (KLR) (27 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17671 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
CRIMINAL MISCELLANEOUS APPLICATION E072 OF 2025  
WM KAGENDO., J  
NOVEMBER 27, 2025**

**BETWEEN**

**MAXWELL ODHIAMBO NJERI ..... APPLICANT**

**AND**

**THE REPUBLIC ..... RESPONDENT**

**RULING**

**The Application**

1. This is an application by the Applicant seeking the following orders: That this Honourable Court be pleased to grant leave to file an application for review of sentence pursuant to Section 397 of the Criminal Procedure Code. The application is grounded upon the annexed affidavit of Maxwell Odhiambo Njeri, together with such other grounds as may be adduced during the hearing.
2. The Applicant was arrested, charged, tried, convicted and sentenced for the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code.
3. That after undergoing the due process, the Applicant was found guilty and sentenced to thirty (30) years' imprisonment considering the circumstances of the case.
4. That there is no doubt that the Applicant was sentenced to serve 30 years' imprisonment by the trial court for the above offence. The Applicant does not contest the conviction, as the same was safely arrived at based on the evidence and circumstances presented.
5. That the purpose of punishment is to correct and rehabilitate the offender. However, a sentence that is excessive does not serve the interests of justice either to the offender or to society.
6. That this Honourable Court is clothed with jurisdiction and competence to offer relief in circumstances such as the Applicant's under Article 23(1) and Article 165(3) of *the Constitution*, as well as Section 397 of the Criminal Procedure Code.



7. That the Applicant approaches this Honourable Court seeking review of sentence in consideration of his current age, which is 54 years.
8. That the Applicant has been in custody for over ten (10) years since the date of arrest, a considerable period within which the Applicant has reformed and rehabilitated.
9. That support is further drawn from the World Health Organization (WHO) 2018 life expectancy data, which indicates life expectancy for males in Kenya as 64.4 years.
10. That the Applicant prays that this Honourable Court grants an order for re-hearing on mitigation.

### **Legal Foundation Of The Application**

11. Section 397 of the Criminal Procedure Code  
Grants the High Court jurisdiction to determine criminal applications arising from trials conducted by the High Court.
12. Sections 216 and 329 of the Criminal Procedure Code  
Provide that the court may, before passing sentence, receive such evidence as it thinks fit to inform itself of the proper sentence to be imposed.
13. Article 165(3) of *the Constitution*  
Vests the High Court with unlimited original jurisdiction in criminal and civil matters.
14. Article 23(1) of *the Constitution*  
Grants the High Court jurisdiction to hear and determine applications for redress of violations or threats to rights and fundamental freedoms.
15. The Applicant submits that the sentence of 30 years is harsh and excessive considering his current age of 54 years. He relies on the Court of Appeal decision in *Ali Abdalla Mwanza v Republic*, Criminal Appeal No. 259 of 2012 (Visram, Karanja & Koome JJA), where the Court observed:  

“...in considering whether the sentence of 40 years was manifestly excessive, we have taken note of the latest WHO 2018 health profile for Kenya indicating life expectancy as 64.4 years for males and 68. 9 for females... every case of sentencing must be considered on its own circumstances as no individual should be imprisoned purely to send a message to others...”
16. The Applicant further cites the following mitigating factors: He is a first offender. He is remorseful and has positively transformed during incarceration. The period spent in custody has enabled deep reflection and rehabilitation.

### **Response By The State**

17. The Respondent opposed the application on grounds that the issue of sentence was already determined by a court of competent jurisdiction, and this Court cannot reopen or review the same.
18. It was submitted that the trial judge complied with Section 333(2) of the Criminal Procedure Code by taking into account the period the Applicant spent in custody.
19. The Respondent argued that the application is an abuse of the court process, as the High Court cannot review or sit on appeal over the decision of another High Court judge of concurrent jurisdiction.



Reliance was placed on Daniel Otieno Oracha v Republic [2019] eKLR, where the Court held that a party dissatisfied with a High Court decision must appeal to the Court of Appeal.

### **Analysis And Determination**

20. The issue for determination is whether this Court has jurisdiction to review the sentence imposed by another judge of concurrent jurisdiction.
21. It is well-settled that the High Court cannot review, vary, or set aside a sentence imposed or affirmed by another High Court judge. Doing so would amount to sitting on appeal against a court of equal status and violates the doctrine of judicial hierarchy.
22. In Republic v Karisa Chengo & 2 Others (2017) eKLR, the Supreme Court affirmed that courts of concurrent jurisdiction cannot supervise or review each other's decisions except through appeal.
23. Similarly, in Joseph Nduvi Mbuvi v Republic (2019) eKLR, the Court of Appeal held that a High Court judge cannot sit on appeal against or review the decision of another High Court judge.
24. Guided by these authorities, this Court finds that it lacks jurisdiction to review the 30-year sentence imposed by the trial court. The lawful remedy available to the Applicant lies in an appeal to the Court of Appeal as provided under Article 164(3) of *the Constitution*.
25. Consequently, the undated Application lacks merit and is hereby dismissed.

**DELIVERED, DATED AND SIGNED AT MOMBASA THIS 27TH DAY OF NOVEMBER 2025.  
RULING DELIVERED THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM.**

**WENDY KAGENDO MICHENI JUDGE**

In the presence of:

The Applicant

Mr. Sirima for the State

Bebora – Court Assistant

