



**Nyamawi v Republic (Criminal Miscellaneous Application E027 of 2025)
[2025] KEHC 17658 (KLR) (14 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17658 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CRIMINAL MISCELLANEOUS APPLICATION E027 OF 2025
WM KAGENDO., J
NOVEMBER 14, 2025**

BETWEEN

MUNYIKA MWAKALELA NYAMAWI APPLICANT

AND

THE REPUBLIC RESPONDENT

*(Revision of sentence in Mombasa High Court Criminal Appeal No. 185
of 2007 and Mombasa Magistrate's Criminal Case No. 2563 of 2006)*

RULING

1. The applicant was charged with the offence of murder contrary to section 203 as read with section 204 of Penal Code. He was convicted and sentenced to 30 years imprisonment. Lady Justice Njoki Mwangi further directed that the period he was in custody during the trial to be commuted in the sentence, that is, 8 years and 2 months, in line with the provisions of section 333(2) of the Criminal Procedure Code
2. The applicant did not file an appeal to the court of Appeal. He now seeks a review of the sentence, Jurisdiction of the Court
3. It is trite law that the High Court cannot review, alter, or set aside a sentence imposed or upheld by another judge of concurrent jurisdiction after an appeal has been concluded. This Court therefore lacks jurisdiction to review or interfere with such a decision.
4. This principle is grounded in the doctrine of stare decisis and the hierarchy of courts, which promote consistency and finality in judicial proceedings.
5. In Joseph Nduvi Mbuvi v Republic [2019] eKLR, the Court of Appeal reaffirmed that a High Court judge cannot sit on appeal or review a decision of another judge of the same court, noting that doing so would undermine judicial comity and create uncertainty in the administration of justice.



6. Similarly, in *Republic v Karisa Chengo & 2 Others* [2017] eKLR, the Supreme Court held that the High Court cannot revisit or vary a sentence imposed by another judge of the same court unless there exists a specific statutory provision permitting such review or an appeal is lodged to a higher court.
7. Consequently, this Court finds that the request to review the 30-year sentence cannot be entertained as it would amount to sitting on appeal over a decision of a judge of equal standing and the court of appeal.
8. In *Julius Kitsao Manyeso v Republic* [2021] eKLR, the Court of Appeal clarified that the exercise of the prerogative of mercy is an executive function distinct from judicial sentencing and does not vest jurisdiction in the High Court to revisit or vary such a sentence.

Scope of Revisional Powers

9. Under Section 364 of the Criminal Procedure Code, this Court has supervisory and revisional jurisdiction over subordinate courts, including power to vary, enhance, or reverse orders other than acquittals. However, such powers do not extend to decisions of the High Court or to matters already concluded by a court of concurrent jurisdiction.

On Sentencing

10. The Applicants was convicted of murder under Section 204 of the Penal Code, which prescribes the mandatory death penalty upon conviction.
11. The Supreme Court, in *Republic v Mwangi; Initiative for Strategic Litigation in Africa (ISLA) & 3 Others (Amicus Curiae)* (Petition E018 of 2023) [2024] KESC 34 (KLR), reaffirmed the constitutionality of mandatory minimum sentences and held that trial courts must impose them unless declared unconstitutional by competent authority.
12. The Court of Appeal, in *Charles & Another v Republic* (Criminal Appeal 38 of 2019) [2024] KECA 1902 (KLR), acknowledged the binding nature of that decision, affirming that courts have no discretion to impose sentences below the statutory minimum in such offences.
13. Further, in *Republic v Ayako* (Petition E002 of 2024) [2025] KESC 20 (KLR), the Supreme Court reiterated that only Parliament may define the scope of a life sentence, and appellate courts lack jurisdiction to substitute it with a fixed term.
14. Accordingly, the sentence imposed under Section 333(2) is both lawful and proportionate to the gravity of the offence.

Findings

15. The Court finds no exceptional circumstances or mitigating factors to warrant interference with the lawful sentence imposed.

Conclusion

16. In light of the foregoing, I find that the Notice of Motion lacks merit. It is hereby dismissed in its entirety.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 14TH DAY OF NOVEMBER 2025.

RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM. WENDY KAGENDO MICHENI



JUDGE

In the presence of:

Applicant Respondent: Sirima

Court Assistant: Ms Bebora

