

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT GARSEN**

**CRIMINAL REV. NO. E007 OF 2025**

**MOHAMED BAISHEE.....1<sup>ST</sup>**

**APPLICANT**

**MOHAMED SHEE.....2<sup>ND</sup>**

**APPLICANT**

**VERSUS**

**REPUBLIC.....**

**.....RESPONDENT**

**RULING**

1. The two Applicants filed A notice of motion application seeking for review of the sentences of 20 imprisonment years imposed on each of them. The application is made pursuant to the provisions of Article 50(2) (q) and the supervisory jurisdiction of the High Court under Article 165(6) and (7) of the Constitution of Kenya 2010.
2. The grounds in support of the application are that the 20 years sentence imposed on each one of them is in the totality of the circumstances manifestly harsh, excessive, and inappropriate to the offence of grievous harm thereby constituting an injustice that warrants this court's supervisory intervention. That the trial court did not put sufficient weight to the fact that they were first offenders at the time they were sentenced. That the 2<sup>nd</sup> Applicant was at the time of conviction a respected village

headman, a testament to his prior good character and standing in the community. That the sentencing court did not consider the Applicants' personal circumstances such as their age, health and severe social economic hardship. That the lengthy incarceration has inflicted hardship upon their innocent families and dependents. Further that the applicants have expressed genuine remorse for their actions and harm caused to the victim and are committed to making amends. That they propose detailed plan for the victim's compensation and community reconciliation.

3. The Applicants contend that the sentence do not align with the progressive, rehabilitative and restorative goals of recurrent Sentencing Policy Guidelines (2023) which prioritise non custodial sentence. That they are suitable candidates for noncustodial sentence such as probation or community service which could better serve the objective of rehabilitation and re-integration while ensuring accountability. They urge the court to substitute the sentence with suitable sentences that the court deems appropriate.
4. The application is made pursuant to Article 165(6) and (7) of the Constitution of Kenya which Article is expressed in section 362 of the Criminal Procedure Code. The ambit of that section is that the High Court in exercising its powers of supervision over subordinate courts may call for and examine a decision or order make by a subordinate court so as to satisfy itself as to the legality, correctness and propriety of such decision and or order.

5. It has however to be noted that the supervisory powers of the High Court under Article 165(6) and (7) is only confined to the High Court supervising subordinate courts and tribunals. It does not extend to supervising other courts of equal status or re-evaluating decisions and or orders of Judges of equal jurisdiction.
6. What the Applicants have not disclosed to this court is that they filed an appeal to the High Court against the conviction and the sentence of the lower court. The High Court (Githinji J) upheld the conviction and the sentence. In upholding the sentence of 20 years on each of the Applicants, the learned Judge stated that the serious nature of the injuries inflicted on the victim and the manner they were inflicted bordered on the *mens rea* of attempted murder. That the sentence of 20 years for grievous harm was fair given the circumstances of the case.
7. Accordingly, it is my holding that this court has no power to review a sentence imposed by another Judge of equal status. The application herein lacks merit and is dismissed.

**Delivered, dated and signed at GARSEN this 17<sup>th</sup> day of February 2026.**

**J. N. NJAGI**  
**JUDGE**

**In the presence of:**

**Miss Ochola for Respondent**

**Appellant - Present in person at G.K. Prison Hindi**

Court Assistant: Rahma