

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MURANG'A
HIGH COURT CRIMINAL REVIEW NO. 137 OF 2022

GIDRAF MWANGI THUO.....
APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. This is an appeal against sentence from Kangema Senior Magistrates Court in 506 of 2017. The Applicant was tried and convicted of the offence of grievous harm contrary to **section 234 of the Penal Code**. He was sentenced to 20 years imprisonment on 25th January 2019.
2. The Applicant applied to this Court through a Notice of Motion Application dated 28th December 2022 through the Officer-In - Charge Kerugoya Prison for a revision of his sentence. The application is anchored on **Sections 333(2)** of the **Criminal Procedure Code** and seeking inter alia for orders for revision of the sentence meted upon the Applicant and consider the applicant for a non-custodial sentence for the remainder of the sentence through application of Section 3 of the Community Service Order Act.
3. The subject Application for revision is supported by the grounds set out on its face and the Applicant's Affidavit of even date wherein he deponed *inter alia* that he was arrested on the 25th November 2017 and was incarcerated throughout his trial until his conviction and sentence 25th January 2019.

4. The Applicant's sole prayer is that the trial court failed to take into account the period of one year and two months that he spent in remand custody pending and during his trial.
5. Counsel for the Prosecution, P. Mwangi submitted that the applicant had filed an appeal in the High Court vide **Murang'a High Court Criminal Appeal No. 6 of 2019** and that the sentence was revised downwards to 13 years. In the instant application, the applicant focusses on the issue that the trial magistrate had erred by failing to take into account and to factor into the sentence the period that the Applicant spent in custody pending his trial.
6. In considering this application I will address myself to one issue: whether this court has jurisdiction to handle this matter while the applicant had exercised his right of appeal in the same court.
7. The High Court's power of revision is set out in Article **165 (6) and (7) of the Constitution which provides:**
 - (6)The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but over a superior court.***
 - (7)For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.***

8. A perusal of the pleadings herein shows that the legality of the Sentence meted against the Applicant has already been addressed by a court of competent jurisdiction. As a general rule, the High Court can only review the Judgment of a subordinate court as provided for under **sections 362 to 364 of the Criminal Procedure Code**. This court therefore does not have the jurisdiction to review its own decision. In **John Kagunda Kariuki v Republic (2019) eKLR**, Ngugi J. (as he then was) held that:

“In the present case, the Applicant’s appeal has already been heard by the High Court. He cannot return to the High Court for a review of the sentence imposed. He is at liberty to make an argument for reduced sentence at the Court of Appeal”.

9. It follows therefore that this court although differently constituted, is a court of concurrent jurisdiction and has already upheld the Applicant’s conviction and revised the sentence. The Applicant’s only further recourse regarding his sentence that now lies in the Court of Appeal and not in this court.

10. In the circumstances, I find that this court has no jurisdiction to entertain this matter.

11. ***The Application is hereby dismissed.***

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 3RD DAY OF MARCH, 2026.

**HON. T. W. Ouya
JUDGE**

For Applicant..Gidraf Mwangi Thuo (Present at Nyandarua Prison)

For Respondent.....Mr. Nyakio

COURT ASSISTANT.....Brian

ORIGINAL