



**Cheboswony v Republic (Criminal Revision E154 of 2024)
[2026] KEHC 2953 (KLR) (5 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 2953 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ITEN
CRIMINAL REVISION E154 OF 2024
E OMINDE, J
MARCH 5, 2026**

BETWEEN

SOLOMON KIPLIMO CHEBOSWONY APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. By way of a Notice of Motion filed on 16th December 2024, the Applicant seeks, in a nutshell, a revision of the sentence in Iten Chief Magistrate’s Criminal Case No. E449 of 2021. The Applicant was charged and convicted of the offence of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code. The particulars of the offence were that on 14th June 2021, at Kapsio estate in Keiyo North Sub County, within Elgeyo Marakwet County, he unlawfully killed Phyllis Jepkoech.
2. The Application is premised on the grounds on the face of it and the averments of the Applicant in the affidavit in support of the application. He maintains that he is remorseful, repentant and rehabilitated and urged the court to issue a lesser or non-custodial sentence.

Applicants’ submissions

3. The Applicant opened his submissions by laying down amended grounds for revision of sentence as follows;
 - i. That Your lord/Ladyship (I) was convicted and sentence to serve (40) years imprisonment which was minimum mandatory sentence.
 - ii. That (I) am a first offender with the young children of (4) and (3) sibling’s and aged parents thus beg this Hon. Court to be pleased and kindly exercised its discretion and accord a more lesser sentence like (15) years.



- iii. That (I) am a young man who deserves a second chance in life and promise this Hon. Court, that (I) have learned a hard lesson in incarceration and if given a chance (I) will be a law abiding citizen and with the skills and knowledge acquired through the rehabilitation program (I) will be the teacher, a mentor and a role model to youths outside there who are of similar behavior and are not aware of the law and its consequences.
4. The Applicant stated that he was remorseful for his actions and takes full responsibility for the crime he was charged with. He urged the court to consider the circumstances of the case to wit; that at the time of the commission of the crime he was fully obsessed by hallucinations and was provoked into acting the way he did by rage and anger, he lacked self-control and reservation without knowing that he was breaking Section 17 of the Penal code. He urged the court to consider that he is a first offender and prayed that the court finds the circumstances as sufficient mitigating factors that cumulatively amount to substantial and compelling reasons necessitating a deviation from the initially prescribed sentence of life.
5. The Applicant urged that in the case of Francis Opondo vs Republic (2017) eKLR, the court set out the principles of sentencing and urged that the sentence imposed needs to take account of the need to accord him an opportunity rehabilitated. He additionally cited the case of Douglas Muthaura Ntoribi vs Republic (2014) eKLR in this regard.
6. Counsel reiterated that he was remorseful and urged that he has been rehabilitated. further, that he has gained numerous skills and will be useful to society once released. He urged the court to release him.

Respondents' submissions

7. Learned counsel for the state laid down the background of the case and pointed out that the Appellant was aggrieved by the Judgment of the trial court and thus appealed in High Court Criminal Case No. 14 of 2023 before the Iten High Court. The Appeal was heard and determined by this honorable court, and the same was dismissed. Counsel urged that this Court lacks jurisdiction to hear and determine the Applicant's application for review sentence review as the Court is functus officio having pronounced its judgment on the said appeal.
8. Counsel submitted that it is a trite law that a court cannot sit in review or appeal over decisions of courts of equal and competent jurisdiction and placed reliance on the Court of Appeal decision in *Lusaka v Republic* [20231 KECA 1071 (KLR)]. Counsel urged that the only occasion when the Court can review its judgment is when it is required to correct any errors of clerical or arithmetic nature in the judgment which have arisen from accidental slip or omission or where there are errors of law that have occasioned a miscarriage of justice, citing *Benjoh Amalgamated Limited & another v Kenya Commercial Bank Limited* (2014) KECA 872 (KLR).
9. Counsel urged that the only recourse the Applicant has is filing an appeal in the Court of Appeal, as this honorable court lacks jurisdiction to hear and determine the current application. He urged the court to dismiss the application in its entirety.

Determination

10. In light of the Application and the submissions made, the only issue for determination is;
Whether this court has Jurisdiction to interfere with the Applicants' sentence
11. The position in this matter, and which position the court notes the Applicant did not disclose in his Application, is as has been submitted by the Counsel for the State. The Applicant, being aggrieved with the decision of the trial court, the lodged an appealed to the High Court, against his sentence



in Iten HCCRA No. 14 of 2023, formerly Eldoret HCCRA No. 449 of 2021. The said Appeal was dismissed by Mr. Justice Wananda J.R Anuro vide a Judgment delivered on 6th November 2024.

12. On the issue of whether a court can review a sentence wherein a party has already appealed before a court of equal and concurrent jurisdiction and the appeal heard and determined on its merits, the Court of Appeal in the case of Peter Ng'ang'a Muiruri Vs. Credit Bank Ltd & 2 Others Civil Appeal No. 203 of 2006 held as follows;

“It would be a usurpation of power to push forward such an approach, and whatever decision emanates from a court regarding itself as a constitutional court, with powers of review over decisions of concurrent or superior jurisdiction, such decision is at best a nullity.”

13. Additionally, in the decision in John Kagunda Kariuki v Republic [2019] eKLR, Ngugi J (as he then was) expressed himself as follows;

“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...”

14. The above being the position pertaining in the instant case, where the Applicant’s appeal over the same said issue of the sentence imposed by the trial court was dismissed by a court of equal and concurrent jurisdiction to this court, it is my finding that the application for review is misconceived and lacks merit for reasons that this court is now functus officio. The same is accordingly dismissed.

15. Right of Appeal 14 days.

READ DATED AND SIGNED AT ITEN ON 5TH MARCH 2026

E. OMINDE

JUDGE

