



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA COUNTY

COURT NAME: MOMBASA HIGH COURT

CASE NUMBER: HCCRREV/E471/2025

AZIZI AWADH ALIAS SADI AND WALTER MANDELA VS THE REPUBLIC

RULING

Introduction

1. This is a revisionary application filed by the applicant, Aziz Awadh alias Sadi, seeking modification of a custodial sentence imposed by the trial court following his conviction for breaking into a building and committing a felony contrary to section 306(a) of the Penal Code. The applicant contends that, in view of his advanced age and the remaining period of imprisonment, a non-custodial sentence such as community service would be more appropriate, in line with contemporary sentencing policy and principles of restorative justice.

Background

2. In 2025, the Chief Justice of Kenya conducted a visit to Garissa G.K. Prison, during which eighteen (18) elderly prisoners were released to serve their sentences under non-custodial measures such as community service. The Chief Justice emphasized a paradigm shift from a punitive model of incarceration toward a rehabilitative approach that promotes reintegration and restores human dignity. She stated:

“We are moving away from the old approach that focused solely on punishment, where those who came into conflict with the law were seen as beyond redemption, towards an approach that recognizes the human potential in every person. We acknowledge that



people make mistakes, and sometimes circumstances lead individuals down the wrong path.”

3.She further observed:

“Congestion severely undermines the prison’s ability to fulfill its core function —rehabilitation and the reformation of offenders. Overcrowded prisons are not conducive to humane living conditions, and without such conditions, the dignity of those incarcerated is compromised.”

4.The Judiciary’s “Social Transformation Through Access to Justice” blueprint builds on this philosophy, prioritizing a people-centred justice system. In alignment with this vision, this Court, together with staff and stakeholders including the Probation Office and the Office of the Director of Public Prosecutions (ODPP), conducted a visit to Shimo La Tewa G.K. Prison at Shanzu in December 2025. The purpose was to assess prisoner welfare, conduct civic education, and encourage alternatives to custodial sentences for elderly and deserving inmates to promote rehabilitation and decongestion.

5.The applicant was convicted of breaking into a building and committing a felony contrary to section 306(a) of the Penal Code and sentenced to five (5) years’ imprisonment. A sentence review report was not filed, and the application is therefore considered solely under section 362 of the Criminal Procedure Code.

6.Learned counsel for the ODPP, Mr. Sirima, informed the Court on 9th February 2026 that the applicant is one of the elderly prisoners observed during the Court’s visit to Shimo La Tewa Prison.

Legal Framework

7.The Court’s jurisdiction to exercise revisionary powers under section 362 of the Criminal Procedure Code has been well established. In *Martin Mavuti Kituyi v Republic, HCCR Revision No. 27 of 2013*, the Court stated:

“...the very nature of revision as a discretionary remedy explains the policy underpinnings of section 364(5) of the Criminal Procedure Code; that revision should not be a substitute for an appeal whatsoever or insisted upon by a party who has not filed an appeal where one was provided for. Revision primarily serves to put right instances where a finding, sentence, order or proceedings of a lower court are tainted by incorrectness, impropriety, illegality or irregularity...”

8.In *Muhinze v Republic [2023] KEHC 25896 (KLR)*, the Court emphasized:

“It is trite law that sentencing is discretionary. An appellate court cannot automatically interfere with the exercise of discretion by the trial court. An intervention on discretion is only justified when it is wrongly exercised, such as when the court takes into account irrelevant factors or fails to consider relevant ones, and it is automatic where the sentence imposed is legally erroneous.”(See also *Wanjema v Republic [1971] EA 493* and *Diego v Republic [1985] KLR 621*.)



9. The Sentencing Policy Guidelines of 2023, including references to *Jonathan Mutinda v Republic [2004] eKLR* and *Republic v Paul Murima Mbatia [2021] eKLR*, encourage the courts to adopt restorative justice measures and non-custodial alternatives such as community service where appropriate. These measures serve the dual purpose of promoting rehabilitation and decongesting correctional facilities.

Analysis

10. The applicant was arrested on 8th September 2024 and is therefore expected to complete his custodial sentence in 2029. Approximately three (3) years of imprisonment remain. Given the applicant's advanced age and the limited period remaining, continued incarceration would be disproportionate and contrary to the principles of restorative justice.
11. Considering the policy guidance from the Sentencing Policy Guidelines, the Court finds that this is a suitable case to convert the remainder of the custodial sentence into a Community Service Order under the supervision of the Probation Department. This approach balances the need for accountability with the rehabilitative and restorative objectives of the justice system.

Orders

12. The custodial sentence of five (5) years imposed on the applicant is hereby **revised** to the time already spent in custody and a probation sentence of 1 year.
13. The Probation Officer shall ensure proper placement, monitoring, and reporting on the applicant in accordance with the law.
14. It is so ordered.

DATED, SIGNED AND DELIVERED IN OPEN COURT / ONLINE THROUGH MS TEAMS
THIS ...5th..... DAY OF ...March.....2026.

HON. LADY JUSTICE W. K. MICHENI

JUDGE

In the presence of:

The applicant

.Mr. Sirima For the State

Bebora – Court Assistant



SIGNED BY/FOR:
HON. LADY JUSTICE WENDY MICHENI



THE JUDICIARY OF KENYA.
MOMBASA HIGH COURT
HIGH COURT CRIMINAL
DATE: 2026-03-10 02:16:02

