

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT THIKA
CRIMINAL REVISION CASE NO. E045 OF 2025

NICOLUS CHEGE MUGO.....
APPLICANT

VERSUS

REPUBLIC.....
.....RESPONDENT

R U L I N G

Brief Facts

1. The application for determination is undated and seeks for this court to exercise its discretion in revision of the sentence in Ruiru Senior Principal Magistrate’s Court Criminal Case No. E201 of 2025.
2. The applicant states that he was charged with the offence of assault causing actual bodily harm contrary to Section 251 of the Penal Code. The applicant further states that he pleaded guilty to the charge and was sentenced to serve two (2) years imprisonment.
3. The applicant states that he is a first offender and is remorseful. He further states that he is suffering from

acute scabies which have attacked his genitals and his condition has worsened by the current congestion and heat from the prison wards. The applicant, therefore, urges the court to review his sentence and release him or grant him a non-custodial sentence on the remainder of the imprisonment sentence.

4. In opposition to the application, the respondent filed Grounds of Opposition dated 31st July 2025 and states that the applicant has not argued or suggested that the sentence is manifestly harsh and excessive, or its illegal or improper, or that the trial court acted on the wrong principle or took into account irrelevant factors in sentencing or that the proceedings were irregular or in violation of his right in fundamental freedom. The respondent argues that the applicant has made generalized reasons which do not suffice interference with the discretion of the trial court in sentencing or warranting upsetting the sentence imposed by the trial court.
5. The respondent submits that from the trial court record, it is evident that the trial court considered the applicant's mitigation and the pre-sentence report and concluded that he was unsuitable to serve a non custodial sentence as that was not his first conviction. The trial court correctly held that there was need for rehabilitation and deterrence in respect to the applicant. Furthermore, the trial court considered both mitigating and aggravating circumstances during sentencing. However, the aggravating

circumstances outweighed the mitigating factors. The respondent argues that the sentence imposed by the trial court is proper and legal and should be left undisturbed.

6. The respondent states that the offence the applicant was found guilty of is a felony which attracts a sentence of five years imprisonment and thus the trial court was indeed lenient to give him two (2) years.
7. Parties disposed of the application by way of written submissions.

The Applicant's Submissions

8. The applicant argues that he was not supplied with a charge sheet prior to him taking plea thus rendering the plea of guilty unequivocal. Further, the learned trial magistrate failed to explain to him the consequences of pleading guilty to the charge. The applicant further submits that the learned magistrate failed to inform him of his right to legal representation contrary to Article 50(2) of the Constitution.
9. The applicant submits that the learned magistrate failed to consider his mitigating circumstances as he was suffering from acute scabies that had spread all over his body and has worsened following the congestion and heat from the prison wards. The applicant further submits that the sentence is excessive and the learned magistrate failed to give him an alternative of a fine. The applicant

prays that the court substitute his remaining sentence with a non custodial sentence preferably probation or conditional release under Section 35(1) of the Penal Code.

The Respondent's Submissions

10. The respondent reiterates the contents of her affidavit and submits that the applicant has not placed before the court any material to warrant review of his sentence. The respondent argues that the applicant has not stated that the sentence is manifestly harsh and excessive or that it was illegal or improper, or that the court acted on wrong principle or omitted relevant factors in sentencing, or that the proceedings was irregular or in violation of his rights or fundamental freedoms. The applicant only gave generalized reasons which do not suffice interference with the discretion of the trial court in sentencing or warrant upsetting the sentence imposed by the lower court.

The Law

11. The High Court's power of revision is set out in **Article 165 (6) and (7)** 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.

12. Section 362 of the Criminal Procedure Code provides:-

The High Court may call and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of any such subordinate court.

13. Section 364(1) of the Criminal Procedure Code provides:-

In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders or which otherwise comes to his knowledge, the High Court may”-

(a) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by

section 354, 357 and 358, and may enhance sentence;

(b) In the case of any other order other than an order of acquittal alter or reverse the order.

(2) No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence.

14. The revisionary jurisdiction of the High Court was discussed by Odunga J in a persuasive decision of **Joseph Nduvi Mbuvi vs Republic [2019] eKLR:-**

“In my considered view, the object of the revisional jurisdiction of the High Court is to enable the high Court in appropriate cases, whether during the pendency of the proceedings in the subordinate court or at the conclusion of the proceedings to correct manifest irregularities or illegalities and give appropriate directions on the manner in which the trial, if still ongoing, should be proceeded with. In other words, the High Court’s revisionary jurisdiction includes ensuring that where the proceeding in the lower court has been legally derailed, necessary directions are given to bring the same back on track so that the trial proceeds towards its intended destination without hitches. Not only is the jurisdiction exercisable where the

subordinate court has made a finding, sentence or order but goes on to state that it is also exercisable to determine the regularity of any proceedings of any such subordinate court as well.”

15. Similarly Nyakundi J in **Prosecutor vs Stephen Lesinko [2018] eKLR** outlined the principles which will guide a court when examining the issues pertaining to **section 362 of the Criminal Procedure Code** as follows:-

a) Where the decision is grossly erroneous;

b) Where there is no compliance with the provisions of the law;

c) Where the finding of fact affecting the decision is not based on evidence or it is result of misreading or non-reading of evidence on record;

d) Where the material evidence on the parties is not considered; and

e) Where the judicial discretion is exercised arbitrarily or perversely if the lower court ignores facts and tries the accused of lesser offence.

16. The above provisions convey jurisdiction to this court to exercise revisionary powers in respect of orders of the

subordinate courts. This court is therefore possessed of the requisite jurisdiction to hear and determine this application.

17. The applicant was arrested on 1st February 2025 and charged with the offence of assault causing actual bodily harm contrary to Section 251 of the Penal Code to which he pleaded guilty and was sentenced to two (2) years imprisonment. During mitigation, the respondent informed the trial court that the applicant had no prior criminal records and was therefore a first offender. The trial magistrate also considered the presentencing report and found the applicant unsuitable to serve a non-custodial sentence. The applicant was sentenced on 20/02/2025 to serve two (2) years imprisonment. The trial magistrate noted that the applicant was unsuitable to serve a non-custodial sentence and, in his view, the applicant was in need for rehabilitation as well as deterrence.

18. In regard to the plea for review of sentence based on sickness, the applicant has not annexed any medical report or treatment notes to that effect. It is further noted that the kind of review sought herein and anchored on illness has no legal basis. The applicant can be treated for his condition in prison where medical care is available throughout the County Government hospitals in the county where he is serving sentence.

19. The sentence meted out against the applicant as is provided in Section 251 of the Penal Code is within the law and reasonable given the circumstances of the offence. It is my considered view that the applicant has not demonstrated any reasons to warrant this court to exercise supervisory and revisionary jurisdiction in his favour.

20. I find no merit in this application and it is hereby dismissed.

21. It is hereby so ordered.

***RULING DELIVERED VIRTUALLY, DATED AND SIGNED
AT THIKA THIS 12TH DAY OF MARCH 2026.***

**F. MUCHEMI
JUDGE**