

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
HIGH COURT CRIMINAL REVISION NO. E036 OF 2025

MARTIN WAMBUA MWANGANGI.....
APPLICANT

-VERSUS-

REPUBLICRESPON
DENT

RULING

1. **Martin Mwangangi Wambua** (“the applicant”) was charged in criminal case No.373 of 2017 at Mavoko Magistrate’s Court’s with the offence of grievous harm contrary to section 234 of the penal code. The particulars were that on 9th August 2017 at Mlolongo area in Athi River Sub-county within Machakos County willfully and unlawfully did grievous harm to John Musembi Makau.
2. He was tried, found guilty, convicted and sentenced to 10 years imprisonment on 30th November 2021.
3. The Applicant appealed to this court vide Criminal Appeal No. E079 of 2021 whereby in its judgement delivered on 4th December 2023 Justice F. Rayola Olel, upheld both conviction and sentence and dismissed the appeal.
4. By a Chamber Summons application dated 18th June 2025, the Applicant has sought that the said sentence of 10 years be reviewed and this court be pleased to make a determination that it is within the Applicant’s Constitutional right under Article 50 of the Constitution to be heard in a court of law through an application. The application is based on the grounds that the Applicant is most remorseful for the offence he committed and therefore prays for the court to review his sentence down.

5. Parties filed written submissions to canvass the application. The Applicant's submissions are dated 11th August 2025 while the Respondent's submissions filed by Ms. Agatha Abang Prosecution Counsel are dated 3rd October 2025.
6. The application is opposed by the Prosecution through concise written submissions dated 3rd October 2025. I note that the prosecutions submissions at paragraph 1 erroneously refer to **defilement** which is not the offence in this case. I will consider the same to be an inadvertent error as the offence subject of this matter is known.
7. I have carefully considered the record, the application and the submissions filed on the application. What I have to determine is whether this court can review the Applicant's sentence downwards.
8. I note that the Applicant did not file a second Appeal at the Court of the Appeal in the matter and is now back seeking review of his sentence in the instant application. The Applicant is yet to exhaust his right of appeal in the Court of Appeal.
9. In **William Mwangale Ongoma v Republic (2020) KEHC 1446 (KLR)** it was held that:-

"A court in revision is not concerned with the merits of the decision of the court but rather on the impropriety, mistake, illegality of the order, sentence or judgement.... This court's powers of revision are limited to satisfying itself as to the correctness, legality or propriety of any findings, sentence or order recorded or passed and as to the regularity of any proceedings of any such subordinate court and in exercising supervisory jurisdiction under Article 165 (6) of the Constitution the court does not exercise appellate jurisdiction and therefore cannot review or re-weigh evidence upon which the determination of

the lower court was based and can only upset an order which it considers erroneous, without jurisdiction and constitutes gross violation of the fair administration of justice....”

10. The sentence passed by the trial court was not improper, mistake or illegal to warrant review by this court at this point.
11. The Applicant cannot come back to this court now seeking for a review of his sentence because this court is functus officio. If he has any grievances, he can move the Court of Appeal.
12. For the above reasons this court finds the application for review to be unmerited and the prayers sought are declined. The application is dismissed.
13. Orders accordingly. File closed.

RULING WRITTEN, DATED & SIGNED AT MACHAKOS THIS 11TH MARCH
2026

**NOEL I. ADAGI
JUDGE**

DELIVERED VIRTUALLY ON TEAMS AT MACHAKOS THIS 11TH MARCH
2026

In the presence of:

In person..... for Applicant

Ms. Agatha..... for Respondent

Milly..... Court Assistant