

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KILGORIS

HCCRREV. CASE NO. E033 OF 2025

(CORAM: HON. CHARLES KARIUKI – J)

ONDARA ELIAS MARIITA.....APPLICANT

-VERSUS-

REPUBLIC.....RESPONDENT

RULING

1. By a Notice of Motion dated 18/8/2025, the Applicant seeks the prayers: -
 - i. **Spent.**
 - ii. **That the orders for review to consolidate the criminal files E018of 2024 and E370 of 2024and thereafter review fines imposed of ksh 50,000 each count as per court discretion. Further court consider sentence with a view of substituting it with a probation on heath grounds of the applicant.**
 - iii. **That the Honorable Court be pleased to give any direction and/or orders on the Applicant’s Notice of Motion herein.**
2. It is supported by the grounds on the face of the application namely:
 - 1) That the Applicant was charged with Perjury Contrary to Section 108 (1) (a) as read with Section 110 of the Penal Code, where he was found guilty and convicted on both files separately.
 - 2) That the Applicant was sentenced to pay fine of Kshs. 50,000/= on each count in default to serve 2 years imprisonment to run concurrently on each separate file meaning that in default to pay the fine totaling to Kshs. 350,000/= he will serve 4 years imprisonment.

- 3) That the Applicant is currently serving a sentence of 4 years imprisonment at Kisii GK Prisons and his family don't have capability to raise the fine imposed by the Honorable Court.
- 4) That the Applicant during his submissions disclosed his health condition to the Honorable Court and during his sentence the court never considered the same.
- 5) That the Applicant has a pre-existing health condition and his health is deteriorating since he is suffering from High Blood Pressure, Diabetes and Atherosclerosis, since then he has been on special meals which has come more difficult for him to Corp with while in prison.
- 6) That these pre-existing factors would have persuaded the trial court to issue a lighter sentence in the circumstances in the interest of the Applicant's wellbeing.
- 7) That the Applicant will suffer irreparable loss and damage to his health if the orders sought herein are not granted.
- 1) It is also supported by the supporting affidavit sworn on 18/8/2025 by **Ondara Elias Mariita**:in which he depones that t on the months of March and April in the year 2024, he was arrested and charged with the offence with Perjury Contrary to Section 108 (1) (a) as read with Section 110 of the Penal code in the criminal cases CR, E308/2024 and CR. E370/2024 before Hon. Waswa. He pleaded not guilty and both matters proceeded separately with similar witnesses, and it was concluded in the year 2025 as per the Judgment delivered on the months of 19/02/2025 and 30/04/2025 for CR. E308/2024 and CR. E370/2024 respectively.
- 2) That he was convicted on all the files and was sentenced to pay fine of Kshs. 50,000/= per count in default to serve 2 years imprisonment to

run concurrently on each separate file where the total number of counts he was charged and was found guilty were 7 counts totaling to Kshs. 350,000/= in default to serve 4 years imprisonment.

- 3) That he was not able to raise the fine amount, as he says he is financially drained and thus am currently serving the 2 years sentence on each file totaling to 4 years imprisonment.
- 4) That after conviction he was taken to Kilgoris GK Prison and later transferred to Kisii GK Prison where am currently serving my 4 years sentence.
- 5) Currently his health condition has deteriorated since he is suffering from High Blood Pressure, Diabetes and Atherosclerosis and this has become difficult for him to bear reason being on special meals to ensure his health is not a risk. And this has become a challenge for him to Cope with while in prison.
- 6) That his wife and children are suffering in every way possible including mentally and psychologically due to his health issues as he is on the brink of death if he does not get proper medication and diet.

3. The matter has been canvassed via submissions.

- a) **Applicants Submissions: which reiterates the grounds in the motion and further narrates that** during submission and mitigation, he states to be remorseful and prayed and begged for mercy and leniency as his health needed immediate medical attention.

- 1) The application is opposed by **Respondent's via Submissions** dated 5/3/2026: where reliance is made on Nzioka J. persuasively held, in Juma - vs.- Republic (Criminal Revision E001 of 2024) [2024] KEHC 4043 (KLR) (25 April 2024) that.

“Therefore, a sentence will only be reviewed if it is either incorrect, illegal or improper. Thus, the objective of revisionary jurisdiction is to set right a patent defect or error of jurisdiction or law. This jurisdiction will only be invoked where the decision under challenge is; grossly onerous, there is no compliance with the provisions of the law, or the finding re-ordered are based on no evidence, or material evidence is ignored or judicial discretion is exercised arbitrarily or perversely.”

- 2) The Applicant has applied for a revision of sentence. However, he has not indicated errors made by the trial court in arriving at the current sentences that he is serving. In fact, the Applicant was convicted in two separate cases for the offence of forgery of bond application documents and perjury during two separate bond applications. In both cases the court took into account the mitigating circumstances, including the applicant’s averments that he was undergoing cancer treatment in issuing the sentences.
- 3) The court also took into account the fact that the Applicant had stood surety in two separate defilement cases where the accused persons had absconded and due to the fact that the bond documents were all forged, (from the title and searches to the DCI letters and signatures of verification of the titles save for his passport photos) and that he perjured himself in both instances as to his name, profession and place of aboard. The accused persons could thus not be traced, and the security could not be realized.
- 4) The offences were brazen and call for a deterrent sentence to protect the integrity of judicial procedures in the administration of justice. To release him before he serves half his sentence would undermine this sentencing principle/objective. Moreover, there’s no indication that he is not currently receiving the necessary treatment while in custody. While in custody, the Appellant, as a prisoner has access to medical treatment at the state expense from reputable public hospital. it is also not clear which of the two

cases/sentences he is challenging and the reasons thereof with reference to the specific case.

5) **Issues analysis and determination**

4. The supervisory power of the High court is to examine the records of subordinate courts (Magistrate courts) to ensure the correctness, legality, or propriety of any finding, sentence, or order.. It is a procedural tool meant to correct injustices, distinct from an appeal, and is primarily governed by Sections 362 and 364 of the Criminal Procedure Code and Article 165(6) of the Constitution.

5. Key Aspects of Criminal Sentence Revision

- i. **Purpose:** To correct errors of law or fact, particularly regarding sentences that are illegal, excessive, or improper.
- ii. **Court Hierarchy:** The High Court exercises revisionary power over subordinate courts but cannot review decisions of its own concurrent jurisdiction or the Court of Appeal.
- iii. **Initiation:** Revision can be initiated by the High Court on its own motion, on a report by a subordinate court, or through an application by an aggrieved party.
- iv. **Mandatory Consideration of Remand Time:** A major basis for revision is the failure by trial courts to adhere to **Section 333(2) of the Criminal Procedure Code**, which requires that time spent in custody before sentencing be deducted from the final sentence.
- v. **Non-Custodial Options:** The High Court may review a custodial sentence and substitute it with non-custodial options such as probation or community service, especially if the offender is a first-time offender or for petty offences.

6. Legal Grounds for Revision

- i. **Illegal/Excessive Sentence:** The sentence passed exceeds the maximum legal limit or is grossly disproportionate to the crime.
 - ii. **Failure to Consider Mitigating Factors:** The court did not take into account the personal circumstances of the offender, remorse, or rehabilitation potential.
 - iii. **Failure to Factor in Remand Time:** The sentence does not reflect the period spent in pre-trial detention.
 - iv. **Inconsistency in Sentencing:** Co-accused receive vastly different sentences for the same offence without justification.
7. The Applicant has applied for a revision of sentence. However, he has not indicated errors made by the trial court in arriving at the current sentences that he is serving. He has not proven any of the grounds stated in the cited provisions of law which court with jurisdiction to review sentences. In fact, the Applicant was convicted in two separate cases for the offence of forgery of bond application documents and perjury during two separate bond applications. In both cases the court took into account the mitigating circumstances, including the applicant's averments that he was undergoing cancer treatment in issuing the sentences.
8. The court also took into account the fact that the Applicant had stood surety in two separate defilement cases where the accused persons had absconded and due to the fact that the bond documents were all forged, (from the title and searches to the DCI letters and signatures of verification of the titles save for his passport photos) and that he perjured himself in both instances as to his name, profession and place of aboard. The accused persons could thus not be traced, and the security could not be realized.
9. The offences invited deterrent sentences to protect the integrity of judicial procedures in the administration of justice. To release him before he serves half his sentence would undermine this sentencing principle/objective. Moreover, there's no indication

that he is not currently receiving the necessary treatment while in custody. While in custody, the Appellant, as a prisoner has access to medical treatment at the state expense from reputable public hospital. It is also not clear which of the two cases/sentences he is challenging and the reasons thereof with reference to the specific case.

10. Thus, court finds no merit in the application and dismisses the application.

DATED AND DELIVERED AT NAROK VIA MICROSOFT TEAMS THIS

13TH MARCH 2026.

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CHARLES KARIUKI

JUDGE