



**Nyumu & 3 others v Republic (Criminal Revision E256 of 2024 & E028 of 2025  
(Consolidated)) [2026] KEHC 3383 (KLR) (12 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 3383 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
CRIMINAL REVISION E256 OF 2024 & E028 OF 2025 (CONSOLIDATED)**

**NIO ADAGI, J  
MARCH 12, 2026**

**BETWEEN**

**BONIFACE NZAU NYUMU ..... 1<sup>ST</sup> APPLICANT  
CHARLES WAMBUA NZAU ..... 2<sup>ND</sup> APPLICANT  
JAMES NYUMU NZAU ..... 3<sup>RD</sup> APPLICANT  
DANIEL NZUKI NZAU ..... 4<sup>TH</sup> APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Arising from sentences of four (4) years imprisonment in criminal case file No. E046 of 2022 and five (5) years imprisonment in criminal case file No. E422 of 2022 at Kangundo Law Courts)*

**RULING**

**Background**

1. In Kangundo Criminal Case No. E046 of 2022 (Revision E256 OF 2024);

The Applicants were charged with the offence of Threatening to Kill contrary to section 223(1) of the Penal Code. The particulars were that on the 15<sup>th</sup> day of January 2022 at Musini village Nguluni Sub-location in Matungulu Sub-county within Machakos county without lawful excuse uttered words threatening to kill Nyumu Kilonzo namely "tutakuua " [we will kill you] the words which they directed to the said Nyumu Kilonzo contrary to section 223(1) of the Penal Code.

2. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Applicants were arraigned in court on 17<sup>th</sup> January 2022 where upon reading of the charges to them, they pleaded guilty to the charges. On 2/2/2022 the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Applicants indicated they wished to change plea and once the charges were read to them they all pleaded not guilty.



On 27/02/2023 the 4<sup>th</sup> Applicant's case was consolidated with the case of the first 3 Applicants and the charges were read over to all the four Applicants and the pleaded not guilty. The matter was set down for hearing. The prosecution called four (4) witnesses in proving its case. The Applicants each tendered unsworn evidence. The Applicants were convicted of the offence of threatening to kill contrary to section 223(1) of the Penal Code and sentenced to four (4) years imprisonment each on 13/5/2025.

3. In Kangundo Criminal Case No. E422 of 2022 (Revision E028 OF 2025):

The Applicant was charged with the offence of Threatening to Kill contrary to section 223(1) of the Penal Code. The particulars were that on 19<sup>th</sup> April 2022 at Matuu Ma Mwituu village Matungulu Sub-location in Machakos County, without lawful excuse uttered threatening words to Nyumu Kilonzo that "Yila Wiuka vaa muundani utena security ngakuwaa na ndiyuwaa " (if you come to the shamba without security I will kill you and kill myself)

4. The Applicant pleaded not guilty. The matter was set down for hearing. The prosecution called two (2) witnesses in proving its case. The Applicant tendered unsworn evidence and called one witness. The Applicant was convicted of the offence of threatening to kill contrary to section 223(1) of the Penal Code and sentenced to five (5) years imprisonment on 11/7/2024.

**The Applications for revision of sentences:**

5. The Applicants have now filed a Notice of Motion application dated 28/5/2025 seeking for orders that:

- i. That this court has unlimited original jurisdiction to hear and determine this application as enshrined in Article 165(3)(a), (7) of *the Constitution* of Kenya.
- ii. That this Honourable court be pleased to review the sentences of five (5), four (4) years imprisonment for the 1<sup>st</sup> Applicant i.e. in Criminal Case File No. E422 of 2022 and also to issue an order for the same sentences to run concurrently and the offences emanated from the same transaction based on the above-mentioned article and section provided for in *the Constitution* and other statute respectively

6. Directions were given for the two revisions to be heard and determined together since they emanated from similar cases at Kangundo law courts and seek the same orders. The revisions were canvassed through written submissions. The Applicants filed joint submissions dated 1st July 2025 while the Respondent's submissions are dated 21<sup>st</sup> October 2024 filed by Ms. Abang, Prosecution counsel.

7. The 3<sup>rd</sup> Applicant (James Nyumu Nzau) was released from prison after paying the fine.

**The Applicants' submissions:**

8. In their joint written submissions, the Applicants submitted that they were remorseful, sought for forgiveness, they were bread winners whereby their young families depend on them and regret committing the offence to their grandfather. The Applicants asked forgiveness from God, to the court and to the society at large. They pray for leniency.

**The Respondent's Submissions**

9. The Respondent challenged the revisions through concise written submissions dated 21<sup>st</sup> October 2024. The Respondent submits that the Applicants in Revision No. E256 of 2024 went through a full trial and thus have no recourse to apply for revision as the procedure and sentence issued by the trial court was correct and legal. It was its case in relation to Revision No. E028 of 2025 that under Section



348 of the Criminal Procedure Code, the only ground of appeal on a conviction of guilty plea is an interrogation on legality of the sentence.

10. The Respondent submitted that the two revisions arise from two separate cases with separate facts and the said cases were decided differently and therefore this court lacks the legal provisions, backing and jurisdiction to order that the sentences in two separate files run concurrently. It was its case that the findings of the trial Court ought to be affirmed.

**Analysis:**

11. From the foregoing, the only issue for determination is whether the Appellant has made out a case for review of his sentence. The High Court is empowered to review sentences by virtue of its supervisory jurisdiction vested to it under Article 165 of *the Constitution*. It provides as follows: -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 not over a superior Court.

12. Section 362 of the Criminal procedure Code donates the mandate to the High Court to call for 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. Section 364 (5) of the Criminal Procedure Code provides that:

“When an appeal lies from a finding, sentence or order and no appeal is brought, no proceedings by way of revision shall be entertained at the instant of the party who could have appealed”

13. Section 347 (l)(a) of the, Criminal Procedure Code provides that:

“a person convicted on a trial held by a subordinate court of the first or second class may appeal to the High Court”

14. The law does not allow a party who is entitled to challenge the order on conviction or sentence on appeal to personally approach the Court for revision or sentence review. In the case *Martin Mavuti Kituyi v Republic HCCR Revision No. 27 of 2013* the court rendered itself as follows: ■

“...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.

15. In *Kirui & 3 others v Republic [2024] KEHC 12407 (KLR)* J.K Serгон, J held that:

“This court finds that the sentence imposed by the trial court was for a term of five (5) years and it is found to be lawful and found to be as provided for in law. Furthermore, there is no evidence tendered by the applicants in this instant application that the trial court acted upon some wrong principle of law and failed to take into account the proper provisions of the law when passing the sentence warranting this court 's intervention. This court notes that the application for review was also unsupported by any certificates of courses undertaken and/ or letters of recommendation from the prison authorities to demonstrate that they had now



reformed and were also model prisoners. There is therefore no good reason found by this court for it to invoke its revisionary powers so as to interfere with the sentence imposed; the application for sentence review lacks merit. The applicants are found not to have exhausted their avenues for appeal and they therefore are at liberty to file an appeal against sentence (if they still maintain that the sentence imposed is manifestly harsh and excessive”.

16. Before embarking on the process of resentencing, is it important to first highlight the principles behind sentencing generally. In *Thomas Mwambu Wenyi -vs- Republic* (2017) eKLR, the Court of Appeal cited the decision of the Supreme Court of India in *Alister Anthony Pereira -vs- State of Maharashtra* where the Court observed as follows: -

“ .... Sentencing is an important task in the matter of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straight jacket formula for sentencing an accused person on proof of crime. The courts have evolved certain principles: twin objective of sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstance of each case and the courts must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances. The principle of proportionality in sentencing a crime doer is well entrenched in criminal jurisprudence. As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crime doer. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence”.

17. The objectives of the sentencing as set out by the Judiciary Sentencing Policy Guidelines calls upon a Court to consider the gravity of the offence, the threat of violence against the victim, the nature and type of weapon used by the Applicant to inflict harm among others.
18. The foregoing gives this Court the bounds within which to assess the legality of the Applicants’ sentence.
19. This Court has reviewed the proceedings of the trial Court. In *Kangundo Criminal Case No. E046 OF 2022* and *Criminal Case No. E442 OF 2022* 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.
20. The offence of threatening to kill is created by Section 223 of the Penal Code as follows: -

“ Any person who without lawful excuse utters, or directly or indirectly causes any person to receive, a threat, whether in writing or not, to kill any person is guilty of a felony and is liable to imprisonment for ten years”

21. The discretion inherent in a Court to mete out a lesser sentence in the cited section is palpable. Despite the formidable arguments in the Applicants’ submissions.
22. The record shows that the Applicants hurled insults at the complainant, PW1 and the other witnesses testified that they heard the 1<sup>st</sup> Applicant and his sons the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Applicants utter words threatening PW1. Considering the circumstances of the offence; whereby the threats were verbal, not accompanied by real threats of violence, I find that the sentences of 4 years and 5 years were harsh. However, this court is inclined to protecting the complainant and his family as opposed to taking the



risk of granting the Applicants non-custodial sentences. That is so because the evidence adduced clearly established the Applicants have consistently, demonstrated the inability to live peacefully with their grandfather, the complainant.

23. Accordingly, this Court will set aside the 4 years and 5 years sentences and thereof substitute them with a sentence of 3 years for each of the Applicant in the separate trial court cases. The sentences are to be computed from the date of conviction. The period the Applicants were in custody pending trial to be taken into account. The sentences in Kangundo criminal case E046 of 2022 and E422 of 2022 are to run consecutively.
24. Orders accordingly. File closed.

**RULING WRITTEN, DATED & SIGNED AT MACHAKOS THIS 12<sup>TH</sup> MARCH 2026**

**NOEL I. ADAGI**

**JUDGE**

**DELIVERED VIRTUALLY ON TEAMS AT MACHAKOS THIS 12<sup>TH</sup> MARCH 2026**

In the presence of:

In person..... for Applicant

Ms. Agatha..... for Respondent

Milly..... Court Assistant

