

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT CHUKA
CRIMINAL REVISION NO. E013 OF 2025

PRICILLAH KENDI MWANAKE

.....APPLICANT

VERSUS

REPUBLIC.....RESPONDEN

T

R U L I N G

1. Pricillah Kendi Mwanake (Applicant) was the 2nd Accused in Chuka High Court Criminal Case No. 16 of 2018. She was charged alongside four other accused for the murder of one Peter Nyaga Kireru.
2. At the conclusion of the trial, 4 of the Accused were convicted to 25 years' imprisonment.
3. In a sentence issued on 28th April 2022, Gitari J. in sentencing the Accused stated:-

“I have noted that the Accused are first offenders. I have also considered the

mitigation. I however note that this offence is very serious and as rightly pointed out carried a maximum sentence of death.

As I have stated, the Accused subjected the deceased to a most painful and un-deserved death. This trend of punishing people by putting them to death while taking the law in their own hands must be condemned in the strongest possible words and must be discouraged. Having considered all these, I sentence each Accused to serve twenty five (25) years imprisonment. The sentence to run from 17th September, 2018 when they were remanded in custody to await trial. Right of Appeal 14 days.”

4. The Applicant has now filed an Application before this court seeking revision of the above sentence.

5. The revisionary jurisdiction of this court is provided for under Sections 362 of the Criminal Procedure Code as follows:-

“362. The High Court may 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.”

7. In this case, the trial and sentencing was conducted by Gitari J. a court of equal and concurrent jurisdiction. The Applicant could not therefore bring herself within section 362 of the Criminal Procedure Code above.

8. It is trite sentencing is at the discretion of the trial court in **Bernard Kimani Gacheru vs Republic (2002) eKLR**, the Court of Appeal held at follows:-

“ It is now settled law, following several authorities by this court and the high Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, the sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account the wrong material, or acted on the wrong principle. Even if, the appellate court feels that the sentence is heavy and that the appellate

court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, anyone of the matters already states is shown to exist.”

9. I am not persuaded to interfere with the sentence meted out by the trial court. The Applicant ought to have proceeded to the Court of Appeal to challenge both conviction and sentence.

10. In **Moses Dola vs. Republic [2021] KEHC 6180 (KLR)** where Lesiit J. (as she then was) held:-

“The law is clear that the period a person was held in custody prior to being sentenced shall be taken into account. The sentence in this case was imposed by Lagat-Korir, J, a court of parallel jurisdiction, which was the trial court in

this matter. That means that if the Applicant was aggrieved in the manner in which the period he spent in custody before sentence was considered, or not, his recourse is not before this court. His grievance should be addressed on appeal before the Court of Appeal.

He cannot return back to this same court to consider his grievance, for two reasons. First and most, it is this court which passed the impugned sentence. Having delivered itself on the matter, this court is functus officio. Secondly, the grievance he now has should be a ground of appeal which can only be considered on appeal before the Court of Appeal.”

11. In **Daniel Otieno Oracha vs Republic (2019) eKLR**, where Aburili J. held that:-

“The law abhors that practice of a Judge sitting to review a judgement or decision of another Judge of concurrent jurisdiction. Reduction of sentence could only be considered by the Court of Appeal or if this court was sitting on appeal of a judgment of the subordinate court or if the Petitioner was seeking for resentencing after exhausting appeal mechanisms and not otherwise....

The Judgment of Abida Ali-Aroni J. made in accordance with the law has not been challenged. This court cannot sit on appeal of its own Judgement or of court of concurrent competent jurisdiction when the Petitioner had an opportunity to ventilate his grievance before the Court of Appeal even if it was to challenge sentence alone.

Good governance demands that cases be handled procedurally in the right forum. This is because the rule of the thumb that superior courts cannot sit in review appeal over decisions of their peers of equal and competent jurisdiction much less those courts higher than themselves and that matter falling under the exclusive jurisdiction of Supreme Court under Article 163(3) cannot be dealt with by the High court.....”

12 . In the end, the Application has no merit and is dismissed.

Orders accordingly,

**Ruling delivered, dated and signed at Chuka
this 19th day of March, 2026.**

.....
**R. LAGAT - KORIR
JUDGE**

**Ruling delivered in the presence of Applicant
acting in person, Ms Rukunga for the Republic;
Muluvi (Court Assistant)**

ORIGINAL