

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT THIKA
CRIMINAL REVISION NUMBER E150 OF 2024

JIHN NGANGA MUKUI.....APPLICANT

-VERSUS-

REPUBLIC.....RESPONDENT
*(Being an application for review of sentence in the Chief Magistrate's Court
at Gatundu criminal case number E023 of 2023 dated 30-01-2023)*

RULING

In this matter, the applicant through his undated notice of motion seeks to have his sentence of three years in each of the first two counts he faced before the lower court and which were ordered to run consecutively be revised to a non-custodial sentence. The application is supported by his affidavit dated 18-09-2024.

In the lower court, the applicant was charged with two counts of threatening to kill his wife and sister on 6-01-2023 contrary to section 223(1) of the Penal Code. He was also facing a count of creating disturbance in a manner likely to cause breach of the peace by chasing his wife and sister while armed with a hammer and an axe. He pleaded guilty to all the counts and was so convicted. The trial court called for a pre-sentencing report and gave the applicant an opportunity to mitigate before it pronounced the sentence. After listening to the mitigation and reading the pre-sentencing report dated 30-01-2023, the court sentenced the applicant to serve three years for the two counts related to threatening to kill and discharged him on the third count of creating disturbance.

He has now approached this court for revision of the sentence arguing that he does not have any matter pending before any court and that he is suffering in prison whose congestion has led to outbreak of a skin disease. The application is opposed through grounds of opposition dated 3-06-2025 in which the respondent pleads that the sentence meted on the applicant was proper and legal considering the aggravating factors and maintains that the mitigation of the applicant was taken into consideration. The respondent adds that the applicant was lucky to get the sentences which it considers to have been lenient and to that end, has filed a notice of enhancement of sentence dated 14th February 2025.

I have considered the application, the parties' presentations and the circumstances under which the offence was committed and the pre-sentencing report especially the views of victims of the applicant's crime. The report shows that the applicant was an irresponsible father who had perpetually physically and emotionally abused his wife in presence of their children leading to the children's poor performances. He is said to have chased the village vigilant group chairman commonly known as nyumba kumi from their home when he tried to reconcile and mediate disputes within the family. The area administration reported that he had very many unreported cases of violence against his family. He had also stressed his mother to her death and all his family members and the local administration wished that he be given custodial sentence.

The report depicts the applicant as an ungrateful person who took advantage of the love of his deceased mother and magnanimity of his siblings to load it over his immediate family. Although he has no prior conviction, the court holds the opinion that the applicant deserved a deterrent sentence and the trial court

properly applied its mind to the aggravating factors as it was entitled to do while passing the sentence.

From the guidance given by the Supreme Court in respect of what constitutes aggravating factors in ***Muruatetu & another v Republic; Katiba Institute & 5 others (Amicus Curiae) [2021] KESC 31 (KLR)***, I can identify at least three in the applicant's case. The Supreme Court in the cited case held as follows;

'In a sentence re-hearing for the charge of murder, both aggravating and mitigating factors such as the following, would guide the court: -

- i. Age of the offender;*
- ii. Being a first offender;*
- iii. Whether the offender pleaded guilty;*
- iv. Character and record of the offender;*
- v. Commission of the offence in response to gender-based violence;*
- vi. The manner in which the offence was committed on the victim;*
- vii. The physical and psychological effect of the offence on the victim's family;*
- viii. Remorsefulness of the offender;*
- ix. The possibility of reform and social re-adaptation of the offender; and,*
- x. Any other factor that the court considered relevant.'*

Although the factors identified as above were in relation to an offence of murder, it is my opinion that they are applicable where an applicant is asking the court to revise a sentence in a felony like the one the applicant was facing.

Similarly, the Court of Appeal held in *Kilwake v Republic [2019] KECA 5 (KLR)*, that;

‘The Sentencing Policy Guidelines require the court, in sentencing an offender to a non-custodial sentence to take into account both aggravating and mitigating factors. The aggravating factors include use of a weapon to frighten or injure the victim, use of violence, the number of victims involved in the offence, the physical and psychological effect of the offence on the victim, whether the offence was committed by an individual or a gang, and the previous convictions of the offender. Among the mitigating factors are provocation, offer of restitution, the age of the offender, the level of harm or damage inflicted, the role played by the offender in the commission of the offence and whether the offender is remorseful.’

As far as I understand the proceedings in the lower court and in this application, the applicant does not come out as a person who is remorseful or ready to take accountability for his action. He tells me that he is in a congested prison where there has been an outbreak of skin diseases. Nowhere in his application has he indicated that he is ready to reform or he has reformed. Perhaps he still has the same sense of entitlement he had when his mother was alive and showering him with what I would go over-parental love and feels that he should not share a prison with other offenders.

This court is not willing to release a person who is a potential threat to the lives of his children, wife, siblings and the entire community. Until the applicant is able to show that he has reformed, he is remorseful and ready to undergo rehabilitation and re-integration to the society he lives in, he should remain confined away from the society. This court is not ready to facilitate release of a

person who will mock the goals of deterrence and reformation or the purpose of sentencing.

The sentences meted on the applicant are lawful and there is nothing this court finds faulty in the trial court's decision. The charge he faced attracted a maximum sentence of ten years and I do agree with the respondent that the court was indeed lenient on the applicant. Let the applicant remain in custody for more reflection on what life holds for him in future and the fate of his family especially the young children.

In the premises, I find his application lacking merits and the same is hereby dismissed. The respondent had filed a notice of enhancement of sentence but did not address it in its submissions. I do not find it proper at the moment to enhance the sentence.

Dated signed and delivered at Nairobi this 25th day of **March** 2026.

B.M. MUSYOKI
JUDGE OF THE HIGH COURT.

Ruling delivered in absence of the parties.