



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Amakobe v Republic (Criminal Revision E089 of 2024)
[2026] KEHC 4564 (KLR) (19 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 4564 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KWALE
CRIMINAL REVISION E089 OF 2024
F ANDAYI, J
MARCH 19, 2026**

BETWEEN

RICHARD OKUTOYI AMAKOBÉ APPELLANT

AND

REPUBLIC RESPONDENT

(Being an application for commutation of sentence of imprisonment to probation arising from original sentence in Kwale Magistrates Court Cr. Case No. E281 of 2022 Hon. R. Khanali Ogolla delivered on 14th May 2024)

RULING

1. This is an application for revision of sentence by the applicant Richard Okutoyi Amakobe. The applicant seeks commutation of his sentence of imprisonment so as to be placed on probation for the remainder of the prison term. The application is brought under section 6 of the Criminal Procedure Code (Cap. 75) Laws of Kenya, section 364(1)(b) of the Criminal Procedure Code and section 4(2) of the *Probation of Offenders Act* (Cap. 64) Laws of Kenya. The file was placed before this court on 30th October 2025.
2. The application is supported by the affidavit of the applicant Richard Okutoyi Amakobe sworn on 3rd December 2024.
3. The applicant was convicted on three counts and sentenced as follows:
 - a. House breaking contrary to section 304(1)(b) and stealing contrary to section 279(b) of the Penal Code (Cap. 63) Laws of Kenya. He was sentenced to seven years' imprisonment on the limb of house breaking and discharged on the limb of stealing.



- b. Possession of public stores contrary to section 324(3) as read with section 36 of the Penal Code (Cap. 63) Laws of Kenya. He was sentenced to imprisonment for a term of two years or pay a fine of KShs 100,000/=.
 - c. Personating a public officer contrary to section 105(b) of the Penal Code (Cap. 63) Laws of Kenya. He was sentenced to serve three years' imprisonment.
 - d. The sentences were ordered to run concurrently from the date of arrest which was 25th August 2022.
4. The applicant deposes that the said sentence which is basically seven years' imprisonment, translates to four years and eight months' imprisonment pursuant to the provisions of the *Prisons Act* (Cap. 90) Laws of Kenya. He deposes that at the time of this application, he was remaining with a period of less than three years' imprisonment to serve from the time of his arrest on 25th August 2022. That he is due to complete his sentence on 25th April 2027. He therefore pleads that the remainder of his prison sentence be commuted to probation.
 5. He pleads that during his custody, his young family has undergone very difficult times due to his absence as his wife is jobless. He deposes further that he sincerely regrets the offence and promises never to commit any such senseless acts in future. That he is ready to abide by any terms and conditions that may be imposed upon him as to security. That the prison administration has issued him with a favourable progressive report in which they attest to his rehabilitative progress during his period of incarceration.
 6. The applicant also filed submissions to support his application. He submits that his application is based on section 4(2) of the *Probation of Offenders Act* (Cap. 64) Laws of Kenya which provides that:
 - S. 4(2). Where any person is convicted of an offence by the High Court and the court is of the opinion that, having regard to the age, character, antecedents, home surroundings health or mental condition of the offender, or to the nature of the offence, or to any extenuating circumstances in which the offence was committed, it is expedient to release the offender on probation, the court may, in lieu of sentencing him to any punishment, make a probation order, and may require the offender to enter into a recognizance, with or without sureties, in such sum as the court may deem fit.
 7. It is immediately apparent from the provisions of this section that it is not applicable to the application herein for revision because the applicant has not been convicted by the High Court. His conviction was by the magistrate's court.
 8. The applicant also relies on the case of *Samson Madzao Mwamunga v Republic* [2022] KEHC 1538 (KLR). I have looked at this decision whose proper citation for the revision of sentence is *Mwamunga v Republic* [2022] KEHC 11462 (KLR). The citation by the applicant herein relates to the decision on appeal. The applicant has on his own introduced into the High Court's decision foreign material that the High Court at Mombasa never dealt. The submissions relating to the aspect of setting aside the "death sentence" and substituting it with 16 years' imprisonment, five of which were ordered to be served on probation were not part of the High Court decision. In the *Mwamunga* case, the High Court was dealing with an appeal and not revision of sentence per se as in the present case. After the appeal, the High Court went ahead and reviewed the sentence of 15 years' imprisonment on conviction for the offence of defilement contrary to Section 8(1) as read with Section 4 of the *Sexual Offences Act* No. 3 of 2006 to a probation term of three years. However, the facts in that case were so different from those of the applicant herein that I find that the circumstances are not comparable.



9. Section 362 of the Criminal Procedure Code provides for the supervisory power of the High Court over proceedings before the magistrates' courts as follows:

“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.

10. Section 364 CPC provides for the powers of the High Court on revision thus:

1. In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may—
 - a. in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 354, 357 and 358, and may enhance the sentence;
 - b. in the case of any other order other than an order of acquittal, alter or reverse the order.
 - c. ...

11. I have considered the proceedings on sentencing by the trial court as well as the offence charged and I do not find any incorrectness, illegality or impropriety in the sentence passed against the applicant and neither do I find any irregularity in the proceedings.

12. The applicant pleads for the lenience of this court but that is not what this court looks at in revision proceedings. In revision proceedings this court's concern is with the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of the proceedings. Otherwise, the applicant had his chance to mitigate before the trial court. He offered very lengthy mitigation at the time which the trial court considered before passing the sentence.

13. Sentencing is at the discretion of the trial court. For instance, the Court of Appeal restated this position in the case of *Bernard Kimani Gacheru v Republic* [2002] KECA 94 (KLR) thus:

“It is now settled law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, 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, some wrong material, or acted on a 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 stated is shown to exist.

The position was stated succinctly by the Court of Appeal for East Africa in the case of *Ogola S/O Owoura vs Reginum* (1954) 21 270 as follows:-

“The principles upon which an Appellate Court will act in exercising its jurisdiction to review sentences are firmly established. The Court does not alter a sentence on the mere ground that if the members of the Court had been trying the appellant they might have passed a somewhat different sentence and it will not ordinarily interfere with the discretion exercised by a trial Judge unless, as was said in *James v R.*, (1950) 18 E.A.C.A 147:



"It is evident that the Judge has acted upon some wrong principle or overlooked some material factor."

To this we would also add a third criterion, namely, that the sentence is manifestly excessive in view of the circumstances of the case: *R. v Sher Shewky*, (1912) C.C.A. 28 T.L.R. 364."

14. The Court of Appeal, in rejecting an appeal on sentence by the appellant, went on to state and I wish to adopt its words therein for this case that the learned trial magistrate made comprehensive notes on sentence. She took into account everything that was urged before her by the applicant. She did not disregard any material factor, nor did she take into account any matter immaterial. Similarly, she did not act on any wrong principle. The very same matters that the appellant urges before me were urged before the learned trial magistrate and she took all of them into account.
15. Further, the applicant now says that he sincerely regrets the subject offence very much, he decries the same in the strongest terms and promises never to commit such senseless acts in future. Is that just some colourful language to enable him earn a commutation of sentence from imprisonment to a non-custodial sentence or an expression of true remorse? I am inclined to believe that it is more of the former than the later. During his mitigation, he showed no remorse and insisted that he was innocent of the charges in spite of the fact that he had been arrested in the course of committing some of the offences such as possession of public stores and personating a public officer. The applicant filed this application barely four months into his sentence. Even as he submits that the prison officers have given him a favourable progressive report, there is nothing to show what kind of rehabilitation he has undergone. One is tempted to ask what rehabilitation an offender can undergo in four months? Granted that he had been in custody since 2022, the fact is that the earlier period was spent in remand and not as a convict where the objectives of sentencing would be required to be met.
16. More importantly, I have noted the pre-sentence report filed by the Probation and Aftercare department in respect of the applicant and it indicates that he lied that his father was deceased but his sister said that was not true. Generally, his relatives were reluctant to have him sentenced to a non-custodial sentence. They wished that he gets a custodial sentence in order to see if that would help him reform. I also note that this was not his first offence of a similar nature. In the circumstances, I find that his plea of being remorseful and repentant is just a smokescreen to enable him get out and continue with his iniquities of committing crime. He needs a little more time to reflect on his offending ways and get fully rehabilitated.
17. In the circumstances I find no merit in the application and the same is dismissed. The applicant to serve his sentence in full as passed by the trial court.
18. Orders accordingly.

RULING DELIVERED, DATED AND SIGNED IN OPEN COURT ON THE VIRTUAL PLATFORM, TEAMS THIS 19TH DAY OF MARCH 2026

HON. ANDAYI W. F.

JUDGE

In the presence of: -

The applicant in person from Shimo la Tewa Medium Security prison. M/s Vallerie for the respondent

Ummu - Court Assistant

2026-03-20 10:37:27

