

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NYERI**  
**CRIMINAL REVISION NO. E090 OF 2025**

**GODFREY MWANIKI WACHIRA.....**  
**APPLICANT**

**VERSUS**

**REPUBLIC.....**

**.....RESPONDENT**

**RULING**

1. This is a ruling over an application by the Applicant seeking to review sentence meted out against him in Nyeri CMTRC No. E117of 2023 *vide* the Judgment dated and delivered by Honourable V.S. Kosgey Senior, Resident Magistrate.
2. The trial court sentenced the Applicant, having found him guilty on the offence of causing death by dangerous driving contrary to section 46 of the Traffic Act. Cap 403.
3. The Applicant was also charged on count 2 with riding an uninsured motorcycle on a public road contrary to section 103B (3) as read with 103B (7) of the Traffic Act, Cap 403.
4. The Applicant was also charged on count 3 with riding a motorcycle on a public road without a driving license, contrary

to section 103B (5) as read with 103B (7) of the Traffic Act, Cap 403.

5. On count 4, he was charged with failing to wear a reflective jacket and helmet contrary to section 103B (1) as read with 103B (7) of the Traffic Act, Cap 403.
6. The court sentenced the Appellant to a pay a fine of Ksh. 300,000/= in default, 3 years imprisonment in respect of count 1. He was also sentenced in count 2 where he was fined a sum of Ksh. 1,000/= in default 2 weeks imprisonment.
7. In count 3 he was fined a sum of Ksh. 1,000/= in default 2 weeks imprisonment.
8. In count 4 he was fined a sum of Ksh. 1,000/= in default, 2 weeks imprisonment.
9. The Applicant stated that he was a first offender and a school-going person. The sentences were to run concurrently.

#### Analysis

7. The issue is whether the sentence should be revised to a lesser one. The Applicant was charged with the offence of causing death by dangerous driving contrary to Section 46 of the Traffic Act. Cap 403.
8. The Applicant pleaded not guilty to the offence. The trial court conducted the trial and at the end of it convicted the Applicant

and sentenced him to serve 3 years' imprisonment if he could not pay a fine of Ksh. 300,000/=.

9. On counts 2, 3 and 4, he was sentenced to pay a fine of Ksh. 1,000/= in default imprisonment for 2 weeks. The sentences were to run concurrently.

10. Aggrieved, the Applicant filed for revision of the sentence. In the High Court of Malaysia in **Public Prosecutor vs. Muhari bin Mohd Jani and Another [1996] 4 LRC 728 at 734, 735** it was stated as doth:

“The powers of the High Court in revision are amply provided under section 325 of the Criminal Procedure Code subject only to subsections (ii) and (iii) thereof. The object of revisionary powers of the High Court is to confer upon the High Court a kind of “paternal or supervisory jurisdiction” in order to correct or prevent a miscarriage of justice. In a revision the main question to be considered is whether substantial justice has been done or will be done and whether any order made by the lower court should be interfered with in the interest of justice...If we have been entrusted with the responsibility of a wide discretion, we should be the last to attempt to fetter that discretion...This discretion, like all other judicial discretions ought, as far as practicable, to be left untrammelled and free, so as to be fairly exercised according to the exigencies of each case.

11. The Supreme Court has propounded in the **Francis Karioko Muruatetu & Another v Republic (2017) eKLR** the following guidelines with regard to mitigating factors applicable in a re-hearing sentence:

- (a) Age of the offender*
- (b) Being a first offender*
- (c) Whether the offender pleaded guilty*
- (d) Character and record of the offender*
- (e) Commission of the offence in response to gender-based violence*
- (f) Remorsefulness of the offender*
- (g) The possibility of reform and social re-adaptation of the offender*
- (h) Any other factor that the Court considers relevant*

12. The purpose and objectives of sentencing as stated in the Judiciary Sentencing policy should be commensurate and proportionate to the crime committed and the manner in which it was committed. The sentencing should be one that meets the ends of justice and ensures that the principles of proportionality, deterrence and rehabilitation are adhered to. The objectives of sentencing as set out in the 2023 Sentencing Guidelines are as follows: -

**“1.3.1 Sentences are imposed to meet the following objectives. There will be instances in which the objectives may conflict with**

**each other - insofar as possible, sentences imposed should be geared towards meeting the objectives in totality.**

- i. *Retribution:* To punish the offender for their criminal conduct in a just manner.**
- ii. *Deterrence:* To deter the offender from committing a similar or any other offence in future as well as to discourage the public from committing offences.**
- iii. *Rehabilitation:* To enable the offender to reform from his/her criminal disposition and become a law-abiding person.**
- iv. *Restorative justice:* To address the needs arising from the criminal conduct such as loss and damages sustained by the victim or the community and to promote a sense of responsibility through the offender's contribution towards meeting those needs.  
**Community****
- v. *Protection:* To protect the community by removing the offender from the community thus avoiding the further perpetuation of the offender's criminal acts.**
- vi. *Denunciation:* To clearly communicate the community's condemnation of the criminal conduct.**

**vii. Reconciliation: To mend the relationship between the offender, the victim and the community.**

**viii. Reintegration: To facilitate the re-entry of the offender into the society”**

13. The appellant was a first offender. He not only caused death by dangerous driving, but his motorcycle was also not insured. Therefore, the deceased's family lost both the deceased and the payment for damages caused. This was reckless disregard of human life. Section 46 of the Traffic Act provides as follows:

Any person who causes the death of another by driving a motor vehicle on a road recklessly or at a speed or in a manner which is dangerous to the public, or by leaving any vehicle on a road in such a position or manner or in such a condition as to be dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the road and the amount of traffic which is actually at the time or which might reasonably be expected to be on the road, shall be guilty of an offence whether or not the requirements of section 50 have been satisfied as regards that offence and be liable to imprisonment for a term not exceeding ten years and the court shall exercise the power conferred by Part VIII of cancelling any driving licence or provisional driving licence held by the offender and declaring the offender disqualified for holding or obtaining a driving licence for a period of three years starting from the date of conviction or the

end of any prison sentence imposed under this section, whichever is the later.

14. The maximum sentence is 10 years. The appellant did not have a driving licence, or insurance. The sentence is actually lenient. The sentence meted out was not excessive. It is a proper sentence.

15. The only concern is that the sentences were ordered to run concurrently. These were sentences that had fines. Section 37 of the Penal Code provides as follows:

Where a person after conviction for an offence is convicted of another offence, either before sentence is passed upon him under the first conviction or before the expiration of that sentence, any sentence, other than a sentence of death, which is passed upon him under the subsequent conviction shall be executed after the expiration of the former sentence, unless the court directs that it shall be executed concurrently with the former sentence or any part thereof:

Provided that it shall not be lawful for a court to direct that a sentence of imprisonment in default of payment of a fine shall be executed concurrently with a former sentence under subparagraph (i) of paragraph (c) of subsection (1) of section 28 or of any part thereof.

16. It is therefore not lawful for a court to direct that a sentence of imprisonment in default of payment of a fine shall be

executed concurrently with a former sentence under subparagraph (i) of paragraph (c) of subsection (1) of section 28 or of any part thereof. The latter section provides as follows:

**Where a fine is imposed under any law, then in the absence of express provisions relating to the fine in that law the following provisions shall apply-**

**(c) in the case of an offence punishable with imprisonment as well as a fine in which the offender is sentenced to a fine with or without imprisonment, and in every case of an offence punishable with fine only in which the offender is sentenced to a fine, the court passing sentence may, in its discretion-**

**(i) direct by its sentence that in default of payment of the fine the offender shall suffer imprisonment for a certain term, which imprisonment shall be in addition to any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of sentence; and also**

17. I set aside the order that the sentences shall run concurrently. The sentences in default of fine shall run consecutively.

#### Determination

18. I therefore make the following orders: -

a) The application is not merited and is dismissed. However, the

order for the sentences in counts 1, 2, 3 and 4 to run concurrently is set aside. In lieu thereof, I substitute with an order that the sentences shall run consecutively.

b) The file is closed.

**DELIVERED, DATED and SIGNED at NYERI on this 21<sup>st</sup> day of April, 2026.** Ruling delivered through Microsoft Teams Online Platform.

**KIZITO MAGARE**  
**JUDGE**

**In the presence of:-**

Applicant present

Mr. Kihara for the Respondent

PC George Maina at Nyeri Maximum GK Prison

Court Assistant – Michael