



REPUBLIC OF KENYA



**Suleiman v Republic (Miscellaneous Application E067 of 2023)
[2025] KEHC 905 (KLR) (30 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 905 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
MISCELLANEOUS APPLICATION E067 OF 2023
SC CHIRCHIR, J
JANUARY 30, 2025**

BETWEEN

MALIK SULEIMAN APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant herein was charged in the Magistrate's court with the offence of robbery with violence contrary to section 295 as read with section 296(2) of the Penal Code. He pleaded guilty to the charge, was convicted on his own plea and sentenced to serve 15 years in prison
2. He has now approached this court by way of a Notice of Motion seeking for a review of the sentence
3. The grounds of seeking the review are that he has been rehabilitated and has since reformed; that he has three children back home who needs his care and support; that he was a first offender; that he has fully reformed and finally that that he is the sole bread winner for his family.
4. He prays for leniency.

Determination

5. The appellant was sentenced to 15 years in prison on conviction of the robbery charge. The penalty prescribed for the offence is death.
6. Although he has cited a number of Articles of the Constitution, I have noted that there is no plea of any violation of Rights. Thus I will treat this as purely an Application for review of sentence.
7. The powers of revision bestowed upon this court pursuant to section 394 to 396 of the criminal procedure code is limited to ascertaining the legality, regularity and propriety of a ruling, order proceedings or sentence of a lower court.



8. Further ,sentencing is at the discretion of the trial court and the principles upon which an Appellate (or a revision court) can interfere with a trial court’s discretion are well settled. In the case of *Shadrack Kipchoge Kogo v Republic* Criminal Appeal No 253 of 2003(Eldoret), the Court of Appeal stated as follows:

“Sentence is essentially an exercise of the trial court and for this court to interfere, it must be shown that in passing the sentence, the court took into account an irrelevant fact or that a wrong principle was applied or short of those the sentence was so harsh and excessive that an error in principle must be inferred”

9. .The Applicant has not demonstrated that there was any illegality, irregularity of impropriety on the sentence meted out to him. Further considered against the prescribed sentence of death , am of the view that the Applicant got away with a lenient sentence.

10. I have also taken note of the extensive mitigation by the Applicant. However this is not a case of resentencing so as to place the duty on the court to relook at mitigation. Mitigation belonged to the trial court and I have noted that the Applicant was given a chance to mitigate.

11. Nevertheless, to the extent that the Applicant has not demonstrated any illegality, incorrectness or impropriety of the sentence handed over to him, this court has no basis to review the sentence.

12. The Application is unmerited . It is hereby dismissed.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 30TH DAY OF JANUARY 2025.

S. CHIRCHIR

JUDGE

