



**Eriodo v Republic (Criminal Application E044 of 2024)
[2025] KEHC 1236 (KLR) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1236 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL APPLICATION E044 OF 2024
RB NGETICH, J
FEBRUARY 27, 2025**

BETWEEN

LOTUBET ERIODO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Appellant Lotubet Eriodowas charged with two counts of offences. In Count 1 is the offence of being in possession of an illegal Firearm contrary to Section 4a 1(a) of the [Firearms Act](#).
The particulars were that the accused on the 23rd day of June, 2022 at Chepilat village in Tiaty East Sub-County Baringo County without lawful authority was found in possession of an illegal firearm namely AK 47 serial No.A07032.
2. Count 2 is the offence of possession of Ammunitions contrary to Section 4(1) as read with Section 4(3) (b) of the [Firearms Act](#) Cap. 114 Laws of Kenya.
The particulars were that the accused on the 23rd day of June, 2022 at Chepilat village in Tiaty East Sub-County, Baringo County without lawful authority was found in possession of 28 rounds of 7.62mm x 39 ammunitions.
3. The appellant denied the charges and the matter proceeded for hearing where the prosecution called a total of 4 witnesses and closed its case. The accused testified in his defense and called 3 witnesses in support of his case.
4. By judgment delivered on the 18th January, 2023 the learned trial magistrate Hon. V. O Amboko found the accused guilty on both counts and convicted him under Section 215. On the 28th day of February, 2023 Hon E. Mulochi who took after the matter sentenced the accused to ten (10) years imprisonment from the date of arrest being (27th June,2022).



5. The Applicant being dissatisfied with the decision of the Trial court filed an appeal to this court vide Kabarnet H.C. Criminal Appeal No.E011 OF 2023 challenging both conviction and sentence. This court delivered judgment on the appeal on the 7th March, 2024 wherein the court dismissed the appeal on both conviction and sentence.
6. The applicant has now approached this court with an application dated 17th September, 2024 seeking orders for review of his sentence under Section 362 as read with Section 364 of the Criminal Procedure Code and in reliance with Article 50(2)(q) of the Constitution of Kenya. The Applicant avers that he is seeking declaratory orders that his rights as an accused person were violated when the 24 hours rule was not adhered to by not being presented to court according to Article 49(1)(j) of the Constitution of Kenya. The applicant further state that the charge is stiff, harsh and excessive in the circumstances of the case. He relies on both the mitigating factors and post sentence mitigation and prays for a lenient sentence.
7. In response the prosecution counsel Ms. Ratemo urged this court to call for social inquiry report. The court directed that a social inquiry report be filed.

Social Inquiry Report

8. From social inquiry, the applicant did not attend any formal education. He has been working as a family herder. He is single with a child aged 7 years who is staying with his Aunt. He had no previous criminal history prior to his arrest and he is of good health. The step-brother who was reached by the probation officer for interview said as a family, they are ready to welcome the Applicant if granted a non-custodial sentence and prayed for sentence to be reduced if court is not inclined to impose non-custodial sentence. He stated that the applicant was a key pillar especially in terms of taking care of the family's cattle and since his incarceration, it has forced the Applicant's siblings who are in school to take turns in taking care of the cattle thus interfering with their education during school period.
9. From the report, the circumstances surrounding the offence is that he was arrested at the local centre after security forces were tipped off that the Applicant was in possession of a firearm. He urges the court for non-custodial sentence and in the alternative, reduction of sentence so that he can get an opportunity to rebuild his life and assist his parents once he is released from prison. He says he took advantage of the incarceration and started formal education and is currently in grade 3.
10. The chief and village elders were interviewed and they described the applicant's character as being good prior to his arrest and that he worked as a herder for the family and mainly spent his free time at the Local center with his friends; that he has not been in conflict with the law before and they were surprised when he was arrested as he was known as a law abiding; that they could not even suspect him to be in possession of firearms. The local administration is not therefore opposed to review of his sentence to either non-custodial or reduced sentence.
11. In response, the prosecution counsel Ms. Bartilol submitted that they oppose the application on ground that there are no new circumstances in this matter. She further submitted that this is a serious offence which has robbed people of East Pokot lives and livestock. She stated that there is need for deterrent sentence for the Applicant and others who intent to commit similar offence and that the sentence imposed by trial court is proper in law and there are no sufficient reasons to interfere with it.

Determination

12. The application herein invokes the revisional jurisdiction of this court which gives the court powers, in appropriate cases, to review and vary any orders, decision or sentence passed by the trial court if the



court was satisfied that the impugned order, decision or sentence was illegal or was a product of an error or impropriety on the part of the trial court. If the court was so satisfied, the law mandated it to make appropriate orders to correct the impugned order, decision or sentence and align it with the law. The above is the import of Section 362 as read with Section 364 of the *Criminal Procedure Code*.

13. It is not disputed that the Applicant had his appeal heard and determined by this Court. The Applicant having appealed to this Court and his appeal determined did not pursue further appeal to the Court of Appeal. The issue is whether this Court is indeed possessed of jurisdiction to review its own order and sentence. The Supreme Court considered the issue of review of judgements and orders in *Fredrick Otieno Outa –v- Jared Odoyo Okello & 3 others* [2017] eKLR and held that:

“...we hold that as a general rule, the Supreme Court has no jurisdiction to sit on appeal over its own decisions, nor to review its decisions, other than in the manner already stated in paragraph (90) above. However, in exercise of its inherent powers, this Court may, upon application by a party, or on its own motion, review, any of its Judgments, Rulings or Orders, in exceptional circumstances, so as to meet the ends of justice. Such circumstances shall be limited to situations where:

- a. the Judgment, Ruling, or Order, is obtained, by fraud or deceit;
- b. the Judgment, Ruling, or Order, is a nullity, such as, when the Court itself was not competent;
- c. the Court was misled into giving Judgment, Ruling or Order, under a mistaken belief that the parties had consented thereto;
- d. the Judgment or Ruling, was rendered, on the basis of a repealed law, or as a result of, a deliberately concealed statutory provision.”

14. From the foregoing therefore, in order for a party to successfully move a court to review its own decision or that of a court with coordinate jurisdiction, the party is required to meet conditions as shown in the just cited case above. The Applicant has not demonstrated any of the grounds set by the Supreme Court as set out above. There is therefore no ground that allows this Court to re-engineer its own judgement. Allowing this application will result in this Court reviewing its previous sentence. From the foregoing, this Court is functus officio. This application for review is hereby dismissed.

Final Orders: -

1. Application for review of sentence is hereby dismissed.
2. The applicant has liberty to seek review of this court’s decision on appeal before the court of appeal.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 27TH DAY OF FEBRUARY 2025.

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RACHEL NGETICH

JUDGE

In the presence of:

BULLETS



- Ms. Bartilol for State.
- Applicant – present.
- Court Assistants – Elvis/Momanyi.

