



**Kiprop alias Kelvin Kimtai v Republic (Criminal Revision
E001 of 2024) [2025] KEHC 3860 (KLR) (28 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3860 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ITEN
CRIMINAL REVISION E001 OF 2024
JRA WANANDA, J
MARCH 28, 2025**

BETWEEN

EZRON KIPROP ALIAS KELVIN KIMTAI APPELLANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant was charged in Eldoret Chief Magistrate’s Criminal Case No E908 of 2023, with the offence of robbery with violence contrary to Section 295 as read with Section 296(2) of the [Penal Code](#).
2. The particulars of the offence were that on 16/06/2023 at Biretwo trading center, Epke location within Keiyo South sub-County, within Elgeyo Marakwet County, jointly with others not before the Court, he robbed one Mercy Jemutai of Kshs 11,200/- and a mobile phone, and immediately before the time of such robbery, used actual violence to the said Mercy Jemutai Tarus. He also faced the alternative charge of handling stolen goods contrary to Section 322(1) as read with Section 322(2) of the [Penal Code](#).
3. By the Judgment delivered on 25/01/2024, the Applicant was convicted of the main offence of robbery with violence and was sentenced to serve 10 years imprisonment.
4. The Applicant has now approached this Court with the Notice of Motion dated 20/02/2024, basically, seeking that this Court reviews the sentence. His grounds are that he regrets and apologizes for taking part in the commission of the crime in question, that at the at the time of the commission of the offence, he was a young man without proper knowledge and understanding on what constitutes crime, and that he now condemns any form of crime in the strongest way possible and is remorseful, repentant and reformed.
5. Although I gave the parties leave to file written Submissions, only the Respondent, through Prosecution Counsel, Calvin Kirui, filed Submissions. The same is dated 13/06/2024.



6. In his Submissions, regarding the Applicant's ground that he has regrets and apologises and that he was a young man at the time of the offence, Prosecution Counsel submitted that the Applicant was an adult and was also granted time to mitigate, and which was taken into consideration.
7. He also urged that the 10 years imprisonment was way below the prescribed sentence under Section 296(2) of the *Penal Code*. According to him therefore, the Applicant cannot base his Application on grounds that were already considered and taken into account by the trial Court without manifesting any illegality or injustice. Further, according to him, the sentence is legal and lawful, and not excessive or harsh given the circumstances of the case and that the Applicant should be warned that the Court may enhance the sentence. He therefore reiterated that the sentence reflects the seriousness of the offence, that according to the *Judicial Sentencing Policy Guidelines 2016*, one of the purposes of punishment is to act as a deterrence of commission of offences and that this purpose will not be served if this Court allows the Application. Regarding the Applicant's allegation of acquisition of skills, Counsel submitted that the same is part of the intended results of the punishment and that the Applicant cannot cite that ground as it is the result expected after imprisonment. He contended that this Court should not interfere with the trial Court's discretion in sentencing unless it is demonstrated that the sentence was manifestly excessive, illegal, improper, or founded on misrepresentation of facts. He cited the case of *Bernard Kimani Gacheru v Republic* [2002] eKLR and urged the Court to dismiss the Application.

Determination

8. The issue for determination herein is "whether this Court should invoke its supervisory jurisdiction of revision and review the sentence imposed by the trial Court".
9. The jurisdiction of the High Court with regard to the powers of Revision is supervisory and is provided under the *Constitution* in Article 165 (6) and (7) in the following terms:
 - "6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.
 - (7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice."
10. Section 362 of the *Criminal Procedure Code*, then provides as follows:

"Revision

362. Power of High Court to call for records

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."
11. In consideration of applications for revision, the operative phrase is "correctness, legality or propriety" of any finding, sentence or order made by the lower Court.



12. The purpose and nature of the revisionary jurisdiction of the High Court was examined by Odunga J (as he then was) in the case of *Joseph Nduvi Mbuvi v Republic* [2019] eKLR in which he observed as follows:

“In my considered view, the object of the revisional jurisdiction of the High Court is to enable the high Court in appropriate cases, whether during the pendency of the proceedings in the subordinate court or at the conclusion of the proceedings to correct manifest irregularities or illegalities and give appropriate directions on the manner in which the trial, if still ongoing, should be proceeded with. In other words, the High Court’s revisionary jurisdiction includes ensuring that where the proceeding in the lower court has been legally derailed, necessary directions are given to bring the same back on track so that the trial proceeds towards its intended destination without hitches. Not only is the jurisdiction exercisable where the subordinate court has made a finding, sentence or order but goes on to state that it is also exercisable to determine the regularity of any proceedings of any such subordinate court as well.”

13. On his part, Nyakundi J, in *Prosecutor v Stephen Lesinko* [2018] eKLR outlined the principles that should guide a Court in exercising its revisionary jurisdiction as follows: (a) where the decision is grossly erroneous; (b) where there is no compliance with the provisions of the law; (c) where the finding of fact affecting the decision is not based on evidence or it is result of misreading or non-reading of evidence on record; (d) where the material evidence on the parties is not considered; and (e) where the judicial discretion is exercised arbitrarily or perversely if the lower court ignores facts and tries the accused of lesser offence.

14. Section 296(1) as read with Section 296(2) of the *Penal Code* under which the Applicant was convicted, provide as follows:

“296. Punishment of robbery

- (1) Any person who commits the felony of robbery is liable to imprisonment for fourteen years.
- (2) If the offender is armed with any dangerous or offensive weapon or instrument, or is in company with one or more other person or persons, or if, at or immediately before or immediately after the time of the robbery, he wounds, beats, strikes or uses any other personal violence to any person, he shall be sentenced to death.”

15. The Supreme Court, in the case of *Francis Karioko Muruatetu and another v Republic* [2017] eKLR, guided that, in re-sentencing by the High Court, the following mitigating factors would be applicable;

- (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; and
- (h) any other factor that the Court considers relevant.
16. The sentence meted out on an offender must therefore be commensurate to the blameworthiness of the offender and before settling on a sentence, the Court must consider the facts and the circumstances of the case in its entirety. In restating the above principles, the Court of Appeal in the case of *Thomas Mwambu Wenyi v Republic* (2017) eKLR quoted the decision of the Supreme Court of India made in the case of *Alister Anthony Pereira v State of Maharashtra* where it was held as follows:
- “70. Sentencing is an important task in the matters of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no strait jacket formula for sentencing an accused on proof of crime. The courts have evolved certain principles: twin objective of the sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the court must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances.
71. The principle of proportionality in sentencing a crime doer is well entrenched in criminal jurisprudence
- As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crime doer. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence.”
17. Similarly, in the case of *Daniel Kipkosgei Letting v Republic* [2021] eKLR, the Court of Appeal stated as follows:
- “..... we observe that 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 end of justice and ensures that the principles of proportionality, deterrence and rehabilitation are adhered to.”
18. Applying the above principles to the facts of this case, I may repeat that the Appellant was liable to a sentence of death. In sentencing the Applicant, the trial Court remarked as follows:
- “I have considered the mitigation as well as the fact that the accused is a first offender. I have also noted the age of the accused who is still a youth and in the circumstances the accused is hereby sentenced to serve 10 years imprisonment”.
19. I have looked at the record and confirmed that indeed the Applicant was given the opportunity to mitigate, which he did. The Prosecution also informed the trial Court that the Applicant was a 1st offender. The crime of robbery with violence is also treated as a serious offence under Kenyan law and society and for this reason, it is always severely punished. The Applicant and his associates seem to have been well known to the complainant, waylaid her, injured her and stole her phone and money. They were later arrested when trying to sell the phone. This is totally unacceptable.



20. I however also note that this attack seems to have been an act of small-time local village misfits, and not hard-core criminals. It sounds like some act of settling of scores. I also note that the assailants were not armed with any weapons at the time of the attack and also that the phone was also recovered. I find these to be mitigating factors which the trial Magistrate may not have taken into account.
21. The Applicant, a youth, is in his prime age, and although the offence he was convicted of merits a severe custodial sentence, I believe that retribution will be best achieved, not by incarcerating him for an unreasonably long period of time, but by giving him a chance to come out of jail after some reasonable period of time and give him a chance to be of benefit to the society. For this reason, I invoke this Court's supervisory powers of revision and reduce the sentence.

Final orders

22. The upshot of my findings above is that I substitute the sentence of 10 years imprisonment and substitute it one of 5 years imprisonment.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 28TH DAY OF MARCH 2025

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WANANDA J. R. ANURO

JUDGE

Delivered in the presence of:

The Applicant (Virtually from Eldoret Main Prison)

Ms. Mwangi for the State

Court Assistant: Brian Kimathi

