



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kehancha v Republic (Revision Case E097 of 2024)  
[2025] KEHC 5312 (KLR) (29 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5312 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAMIRA  
REVISION CASE E097 OF 2024  
WA OKWANY, J  
APRIL 29, 2025**

**BETWEEN**

**NEMWEL KEHANCHA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(From the original Conviction and Sentence in the Chief Magistrates' Court at Keroka, MCCR No. E846 of 2023 delivered by M. Munyekenye, Senior Principal Magistrate on 15th December 2023 and Hon. Hon. C. Ombija on 21st March 2024)*

**RULING**

1. The Appellant was convicted, on his own plea of guilty, for the following offences: -
  - i. Assaulting a police officer in due execution of his duties contrary to Section 103 (a) of the [National Police Service Act](#) No. 11A of 2011.
  - ii. Wilfully resisting arrest from the police officer in due execution of the officer's duties contrary to Section 103 of the [National Police Service Act](#) No. 11A of 2011.
  - iii. Offensive conduct contrary to Section 94(1) of the [Penal Code](#).
2. The trial court sentenced him to serve three years' imprisonment for each count which sentences were to run concurrently.
3. The Applicant has now filed an application for revision of his sentence on the grounds that he was a first offender and is remorseful for his actions. The Application is supported by his sworn affidavit in which he avers that he has a young family that depended on him and that they are starving following his conviction and sentence. He urged the Court to exercise its inherent powers and review the sentence of three years on the grounds that the sentence was manifestly harsh and excessive.



4. At the hearing of the Application, Mr. Chirchir, Learned Prosecution Counsel, informed the Court that he was not opposed to the Application and had no objection to the revision of sentence.

5. Article 50 of the Constitution outlines the rights of an accused person as follows: -

(2) Every accused person has the right to a fair trial, which includes the right-

(q) if convicted, to appeal to, or to apply for review by a higher court as prescribed by law.

6. Article 165 of the Constitution sets out the powers of this Court, on revision, as follows: -

Article 165

1. 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. The Criminal Procedure Code further outlines the manner in which the High Court's revisionary powers are to be exercised. Sections 362 and 364 of the Criminal Procedure Code provide as follows: -

362. Power of the 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.”

364. Powers of the High Court on Revision

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.

2. No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defense:

Provided that this subsection shall not apply to an order made where a subordinate court has failed to pass a sentence which it was required to pass under the written law creating the offence concerned.

3. Where the sentence dealt with under this section has been passed by a subordinate court, the High Court shall not inflict a greater punishment for the offence which in the opinion of the High Court the accused has committed that might have been inflicted by the court which imposed the sentence.

4. Nothing in this section shall be deemed to authorize the High Court to convert a finding of acquittal into one of conviction.



5. When an appeal lies from a finding a sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed.
8. The primary duty of this Court, on Revision of Sentences, is to examine the records of the subordinate courts and satisfy itself as to the correctness, appropriateness and legality of the decisions.
9. This Court is also cognizant of the fact that sentencing is at the discretion of the trial court which discretion is not to be disturbed except under specific circumstances. This principle was aptly stated in *Bernard Kimani Gacheru v Republic* [2002] eKLR where the Court of Appeal held 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.”
10. It therefore follows then that the High Court, when exercising supervisory jurisdiction over the subordinate courts through revision, can only interfere with the sentence of the said courts where the sentence is either illegal or is manifestly excessive or where the court overlooked some material factor or imposed a manifestly inadequate sentence. In *R. v Mohamedali Jamal* [1948] 15 EACA, 126, the Eastern Africa Court of Appeal pronounced itself in this regard as follows: -

“It is well established that an appellate Court should not interfere with the discretion exercised by a trial Judge or Magistrate except in such cases where it appears that in assessing sentence, the judge has acted upon some wrong principle or has imposed a sentence which is either patently inadequate or manifestly excessive.”
11. I have considered the offences for which the Applicant was convicted and the punishment provided by the relevant laws. The offences in the first count are premised under Section 103 of the *National Police Service Act* as follows: -
  103. Assault in execution of duty  
Any person who—
    - (a) assaults, resists or wilfully obstructs a police officer in the due execution of the police officer's duties;
    - (b) assaults, resists or wilfully obstructs any person acting in aid of the police officer;
    - (c) attacks an animal belonging to the Service; or
    - (d) intentionally or recklessly, destroys police property, commits an offence and shall be liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding ten years, or to both.
12. The offence in the third count is premised under Section 94 of the *Penal Code* which provides: -



94. Offensive conduct conducive to breaches of the peace
- (1) Any person who in a public place or at a public gathering uses threatening, abusive or insulting words or behaviour with intent to provoke a breach of the peace or whereby a breach of the peace is likely to be occasioned is guilty of an offence and is liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months or to both.
13. I note that the trial court sentenced the Applicant to three years for each of the three counts. It is trite that a sentence must be commensurate to the offence committed. At the same time, courts are required to consider mitigating and aggravating factors during sentencing. The *Judiciary Sentencing Policy Guidelines* [2016] outline some of the mitigating circumstances at paragraph 23.8 as: negligible harm or damage caused, being a first offender, remorsefulness and pleading guilty at the earliest opportunity.
14. In this case, it was not in dispute that the Applicant was a first offender and had pleaded guilty to the three charges and therefore saved the court precious judicial time that could have been spent in a full trial. In view of the foregoing, the mitigating circumstances and in light of the provisions highlighted herein above, I find that the sentence of three years' imprisonment for each of the three counts was excessive. I find guidance in the decision in *S v Scott-Crossley* 2008 (1) SACR 223 (SCA) at para 35, where it was held thus: -
- “Plainly, any sentence imposed must have deterrent and retributive force. But of course one must not sacrifice an accused person on the altar of deterrence. Whilst deterrence and retribution are legitimate elements of punishments, they are not the only ones, or for that matter, even the overriding ones. ....It is trite that it is in the interest of justice that crime should be punished. However, punishment that is excessive serves neither the interests of justice nor those of society.” (Emphasis added).
15. I have also considered the period that the Applicant had already spent in custody from the time he was convicted on 15<sup>th</sup> August 2023 and I find the same is sufficient punishment for the crimes he committed.
16. In the final analysis, I allow the Application for revision of sentence and set aside the sentence of 3 years for each count and substitute it with a sentence for the period that he has already served in prison. Consequently, I direct that the Applicant be released from custody forthwith unless he is otherwise lawfully held.
17. It is so ordered.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NYAMIRA VIA MICROSOFT TEAMS THIS 29<sup>TH</sup> DAY OF APRIL 2025.**

**W. A. OKWANY**

**JUDGE**

