



REPUBLIC OF KENYA



KENYA LAW
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**Rotich v Republic (Criminal Revision E300 of 2023)
[2025] KEHC 5158 (KLR) (29 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5158 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E300 OF 2023
RN NYAKUNDI, J
APRIL 29, 2025**

BETWEEN

JOHN KIPYEGO ROTICH PETITIONER

AND

REPUBLIC RESPONDENT

*(Being an Application for a review of the sentence of Hon. Hellen
Omondi at the High Court Eldoret delivered on 11/05/2022)*

RULING

1. What is pending before me for determination is an undated Notice of Motion Application where the Petitioner/Applicant is seeking the following orders:
 - a. Spent
 - b. That the Applicant pleads for leniency and a reduction of 5 years sentence to the period already served or non-custodial for the instant case probation.
 - c. Spent
2. The Application is based on the grounds on the face of it where the Applicant states as follows:
 - a. I have since reconciled with the victim family and they even visit me in prison thus my safety and that of the general public is guaranteed.
 - b. That I am a first offender with no criminal record
 - c. I am a sole breadwinner and my family continues to suffer with my continued incarceration.
 - d. That I am going and humbly beg for a second chance to go back in the society to serve as a role model.



- e. Your honour I have served for more than 1 year of the sentence with good conduct and observed all the prison rules and regulations to the latter.
3. The Application is supported by the annexed affidavit dated 2nd October 2023 sworn by John Kipyego Rotich where he avers as follows:
 - a. That I was charged, convicted and sentenced to serve 5 years' imprisonment for the offence of manslaughter contrary to section 203 as read together with section 205 of the [Penal Code](#) on 11/05/2022.
 - b. That I have reformed and learnt from my mistakes and commit not to engage in any criminal activity again if given a second chance in life thus beg for reduction of custodial sentence to the period already served or probation and any other order the court deems fit to grant.
 - c. That I assure the Honourable Court that I am fully rehabilitated and have gained useful skills: anger management; spiritual nourishment and grade III in masonry thus beg for a lesser term to facilitate social reintegration to engage in the development and nation building.
 - d. That I have reconciled with the family of the victim thus no life is endangered nor threatened by my non-custodial conditional release.
 - e. That it is my humble prayer that I be granted a fair opportunity to argue my petition.

Analysis and Determination

4. Upon consideration of the application, the following issue arises for determination; Whether the court should review the applicant's sentence

Whether the court should review the applicant's sentence

5. It is trite law that jurisdiction is everything. Without it, the court cannot adjudicate over a matter. See the famous words of Nyarangi, JA in the case of [The Owners of Motor Vessel Lilian "S" vs Caltex Oil \(Kenya\) Ltd](#) [1989] KLR 1 at page 14:

Jurisdiction is everything. Without it, a court has no power to take one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending the evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction."

6. The Supreme Court of Kenya in the case of [Samuel Kamau Macharia & Another vs Kenya Commercial Bank Ltd & 2 Others](#), Application No 2 of 2011 rendered itself as follows:

A court's jurisdiction flows from either the [Constitution](#) or legislation or both. Thus, a court can only exercise jurisdiction as conferred by the [Constitution](#) or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law..."

7. The High Courts' revisionary jurisdiction is governed by section 364 of the [Criminal Procedure Code](#) which states as follows;
 - (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.
 - c. In proceedings under section 203 or 296(2) of the *Penal Code*, the *Prevention of Terrorism Act*, the *Narcotic Drugs and Psychotropic Substances (Control) Act*, the Prevention of Organized Crimes Act, the *Proceeds of Crime and Anti-Money Laundering Act*, the *Sexual Offences Act* and the *Counter-Trafficking in Persons Act*, where the subordinate court has granted bail to an accused person, and the Director of Public Prosecution has indicated his intention to apply for review of the order of the court, the order of the subordinate court may be stayed for a period not exceeding fourteen days pending the filing of the application for review.
- (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 defence:
- 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 than 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, 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. I take note that the Petitioners were charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code* in Eldoret High Court Criminal Case No 46 of 2017. The matter proceeded to full hearing and upon considering the evidence before it and the testimonies of the witnesses, the Court convicted them of the lesser offence of manslaughter contrary to section to Section 202 as read with Section 205 of the *Penal Code*. They were convicted on May 11, 2022 and each sentenced to terms of 5 years' imprisonment. The Judgment is dated November 28, 2022 and was delivered on March 28, 2022.
9. The applicant had already petitioned to the High Court in Criminal Petition No. E007 of 2022 in which this Criminal Revision emanates in which this Honourable Court gave the following orders:
- i. With regard to section 333(2) of the *Criminal Procedure Code*, I find the Application has merit and allow in the following terms:
 - ii. With respect to the 1st Petitioner Boniface Wekhaya therefore, the period of 2 years and 2 months spent by him in custody during the trial, before sentence, shall be taken into account in computing the sentence period already served or to be served in prison by him.
 - iii. With respect to the 2nd Petitioner John Kipyegon Rotich the period of 1 year and 2 months spent by him in custody during trial before sentence, shall be taken into account in computing the sentence period served or to be served in prison by him.



10. This court cannot review the sentence once more as it would be tantamount to sitting on appeal on a decision of its own. I am guided by the persuasive decision of Hon L Njuguna in *John Gichovi Muturi v Republic* [2021] eKLR where she expressed herself as follows;

The law abhors that practice of a judge sitting to review a judgment or decision of another judge of concurrent jurisdiction. This is because the rule of the thumb is that superior courts cannot sit in review/appeal over decisions of their peers of equal and competent jurisdiction much less those courts higher than themselves. The court which ought to deal with an issue arising out of the decision of this court is the Court of Appeal as it is the one with jurisdiction under Article 164(3) of the *Constitution* and Section 379(1) of the *Criminal Procedure Code*. This is in appreciating the provisions of Article 50(2)(q) of the *Constitution* of Kenya 2010 which guarantees the right of a person if convicted, to appeal to, or apply for review by, a higher court as prescribed by the law."

11. Therefore, this court has no jurisdiction to entertain the application. The upshot of the foregoing is that the Application for resentencing is dismissed for want of merit.

12. It is so ordered

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 29TH APRIL 2025

R. NYAKUNDI

JUDGE

Representation:-

Ms. Kirenge for the State

