



**Kinoti alias Kamkono v Republic (Miscellaneous Criminal Application  
E054 of 2024) [2025] KEHC 7853 (KLR) (30 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7853 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT CHUKA  
MISCELLANEOUS CRIMINAL APPLICATION E054 OF 2024**

**RL KORIR, J**

**MAY 30, 2025**

**BETWEEN**

**ROBERT KINOTI ALIAS KAMKONO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant, Robert Kinoti alias Kamkono filed an Application dated 28<sup>th</sup> March, 2024 seeking to have his sentence reviewed.
2. He states in the Supporting Affidavit that he was convicted and sentenced to 10 years' imprisonment for the offence of threatening to kill. That the court has jurisdiction under Article 165 of *the Constitution* to impose an appropriate sentence.
3. At the hearing of the Application on 25<sup>th</sup> March, 2025, the Applicant submitted that he had been placed on probation before being imprisoned and that he wished to be placed back on a probationary sentence.
4. The Respondents filed submissions in opposition. They submitted that the Appellants were charged with the offence of threatening to kill contrary to Section 223(1) of the Penal code and the matter was hard and determined; and that the applicant was convicted and sentenced. That the Applicant was dissatisfied with the said decision and filed the present Application or sentence review.
5. The Respondent further submitted that the sentence that was meted out against the Applicant was legal, just and fair as the learned magistrate considered all the relevant factors and arrived at a proper sentence in the circumstances.



## Analysis and Determination:

6. This court's revisionary jurisdiction is provided for under Sections 362-364 of the [Criminal Procedure Code](#).

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“362. 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.

363.

- (1) A subordinate court of the first class may call for and examine the record of any criminal proceedings of a subordinate court of a lower class than it and established within its local limits of jurisdiction, for the purpose of satisfying itself as to the legality, correctness or propriety of any finding, sentence or order recorded or passed, and as to the regularity of the proceedings.
- (2) If a subordinate court acting under subsection (1) considers that a finding, sentence or order of the court of lower class is illegal or improper, or that the proceedings were irregular, it shall forward the record with its remarks thereon to the High Court.

364.

- (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 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.”

9. Pursuant to the above provisions, I called for the trial court record. It however came to my attention that the case had gone on appeal and the appeal was heard and determined by Gitari J, a Judge of equal and concurrent jurisdiction.

10. In the Judgement dated 27<sup>th</sup> October, 2020, Gitari J found no reason to interfere with the sentence imposed by the trial magistrate. She however reduced the sentence by 25 hours which the Applicant had served on community service. In affirming the trial court’s sentence, the learned Judge observed that the Applicant had initially been placed on probation but violated the probation order by committing subsequent offences. That the trial court had applied the law correctly when it cancelled the probation sentence.
11. I have no jurisdiction to review the Judgement of a court of equal jurisdiction. Section 362 of the *Criminal Procedure Code* (supra) limits that jurisdiction to decisions emanating from a subordinate court the court cannot review the decision of a court of concurrent jurisdiction, I am persuaded by the case of *Moses Dola vs. Republic* [2021] KEHC 6180 (KLR) Lesit J held:-

“The law is clear that the period a person was held in custody prior to being sentenced shall be taken into account. The sentence in this case was imposed by Lagat-Korir, J, a court of parallel jurisdiction, which was the trial court in this matter. That means that if the Applicant was aggrieved in the manner in which the period he spent in custody before sentence was considered, or not, his recourse is not before this court. His grievance should be addressed on appeal before the Court of Appeal.

He cannot return back to this same court to consider his grievance, for two reasons. First and most, it is this court which passed the impugned sentence. Having delivered itself on the matter, this court is functus officio. Secondly, the grievance he now has should be a ground of appeal which can only be considered on appeal before the Court of Appeal.”

12. It is my view that the Applicant ought to have appealed the decision of Gitari J to the Court of Appeal. He cannot return to the same court for review of his sentence.
13. In the end, the Application has no merit and is dismissed.

Orders accordingly.

**RULING DELIVERED, DATED AND SIGNED AT CHUKA THIS 30<sup>TH</sup> DAY OF MAY, 2025.**

**R. LAGAT-KORIR**

**JUDGE**

Ruling delivered in the presence of the Applicant, Ms Rukunga for the State. Muriuki (Court Assistant).

