



REPUBLIC OF KENYA



KENYA LAW
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**Amweye v Republic (Criminal Revision E002 of 2025)
[2025] KEHC 9355 (KLR) (30 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9355 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL REVISION E002 OF 2025**

S MBUNGI, J

JUNE 30, 2025

BETWEEN

MOSES ABWOTO AMWEYE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant herein was arrested, arraigned in court and charged in criminal case No. 36 of 2012 at Kakamega High Court for the offence of murder contrary to section 203 as read with section 204 of the penal code, pleaded not guilty and after a full trial, was found guilty hence convicted and sentenced to serve 20 years imprisonment.
2. Being aggrieved and dissatisfied with both the conviction and sentence, he appealed against both in the court of appeal in criminal appeal No. 252 of 2019 at Kakamega whereby the appeal was heard and dismissed.
3. The present motion filed by the applicant is brought pursuant to section 327(2), 362, 346 of the C.P.C as read with article 50(2)(q) of the Constitution of Kenya.
4. The applicant seeks this honourable court's intervention in sentencing only in exercise of its jurisdiction opined in paragraph 50(e)(f) of the Supreme Court judgement in application No. 2 of 2011.
5. The applicant prays that this honourable court be pleased to consider the applicant's mitigating circumstances, period spent in correction, rehabilitation among other relevant factors of consideration in sentence determination and thus grant to review his sentence downward.
6. The applicant also prays for this court's leniency to review his sentence and substitute the same with more least sentence that have been awarded to any other person of a similar charge as every person is equal before the law.



Analysis and Determination

7. The applicant has cited paragraph 50 (e)(f) of the supreme court ruling in [application no. 2 of 2011](#), article 50(2)(q) of the [Constitution](#)

8. Article 50(2)(q) of the [Constitution](#) provides as follows:-

“ 50

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

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

9. The Jurisdiction of the high court to review is donated by article 165 (6) & (7) of the [Constitution](#). The article provides:-

“(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. The jurisdiction is supervisory and it extended to the High Court to review the decisions and orders of the sub-ordinate Court. It grants the High Court supervisory jurisdiction over sub-ordinate Courts.

11. The High Court exercises jurisdiction of revision over sub-ordinate Court on orders issued by the sub-ordinate Court. Section 362 of the [Criminal Procedure Code](#) provides as follows:-

“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.”

12. The discretion in sentencing rests with the trial judge because he or she has the knowledge of the relevant facts before him or her and in many instances, has observed the accused and witnesses' demeanor. The discretion must however be exercised judiciously. In the Nigerian case of [African Continentals Bank vs Nuamani](#) [1991] NWLI (parti86)486, it was observed that,

“The exercise of court's discretion is said to be judicial if the judge invokes the power in his capacity as a judge qua law. An exercise of discretionary power will be said to be judicial, if the power is exercised in accordance with the enabling statutes, discretionary power is said to be judicious if it arises or conveys the intellectual capacity of the judge. The exercise must be based on a sound and sensible judgement with a view to doing justice to the parties.”



13. In *Benard Kimani v Republic* (2002) eKLR the Court of Appeal stated that:

“It is now settled law, following several authorities by this Court and 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...”

14. The Supreme Court in *Francis Karioko Muruatetu & Another vs Republic*, Petition No. 15 of 2015, as a guide in sentencing held that:

“...the following guidelines with regard to mitigating factors are applicable in a re-hearing sentence for the conviction of a murder charge:

- 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;
- h. any other factor that the Court considers relevant.”

15. In *Dahir Hussein v. Republic* Criminal Appeal No. 1 of 2015; [2015] eKLR, the High Court held that the objectives of sentencing include: “deterrence, rehabilitation, accountability for one’s actions, society protection, retribution and denouncing the conduct by the offender on the harm done to the victim.”

16. The *2016 Judiciary of Kenya Sentencing Policy Guidelines* lists the objectives of sentencing at page 15, paragraph 4.1 as follows:

“Sentences are imposed to meet the following objectives:

1. Retribution: To punish the offender for his/her criminal conduct in a just manner.
2. Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
3. Rehabilitation: To enable the offender reform from his criminal disposition and become a law abiding person.
4. Restorative justice: To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims’, communities’ and offenders’ needs and justice demands that these are



met. Further, to promote a sense of responsibility through the offender's contribution towards meeting the victims' needs.

5. Community protection: To protect the community by incapacitating the offender.
 6. Denunciation: To communicate the community's condemnation of the criminal conduct.”
17. I have looked at the application, the supporting affidavit and trial court record.
 18. The appellant seeks intervention in sentencing only in exercise of its revision jurisdiction opined in paragraph 50(2)(f) of the Supreme Court judgement in application No. 2 of 2011.
 19. The appellant was sentenced to 20 years imprisonment term by the trial court. By way of appeal to the Court of Appeal, the applicant appealed against both his conviction and sentence. Upon determination, the appeal was dismissed.
 20. The applicant has again approached this court praying for a lenient sentence. This court cannot review the applicant's sentence since it is functus officio.
 21. The Court of Appeal in the case of *Telkom Kenya Limited v John Ochanda* [2014] eKLR, stated that: -

“Functus officio is an enduring principle of law that prevents the re-opening of a matter before a court that rendered the final decision thereon...

The doctrine is not to be understood to bar any engagement by a court with a case that it has already decided or pronounced itself on. What it does bar; is a merit-based decisional re-engagement with the case once final judgment has been entered and a decree thereon issued.”
 22. The applicant herein exercised his right of appeal to the court of appeal on both conviction and sentence. His appeal was dismissed. This court already pronounced itself on the issue of sentence and is thus, functus officio. The only remedy to the applicant, if dissatisfied with his sentence, is to proceed by way of appeal to the Supreme Court.
 23. I therefore find this Application has no merit, it is dismissed.
 24. Right of appeal 14 days.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 30TH DAY OF JUNE, 2025.

S.N MBUNGI

JUDGE

In the presence of:-

Elizabeth, Court Assistant.

Ms Osoro for ODPP present.

Accused present online.

