



**Muthusi v Director of Public Prosecutions (Criminal Revision  
E332 of 2024) [2025] KEHC 9145 (KLR) (26 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9145 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
CRIMINAL REVISION E332 OF 2024  
EN MAINA, J  
JUNE 26, 2025**

**BETWEEN**

**FLORENCE MUTINDI MUTHUSI ..... APPLICANT**

**AND**

**DIRECTOR OF PUBLIC PROSECUTIONS ..... RESPONDENT**

**RULING**

1. By the undated Notice of Motion filed herein on 18<sup>th</sup> December 2024 the Applicant seeks a review of her sentence and reduce it. The application is expressed to be made under Sections 362 – 364 of the *Criminal Procedure Code* and Article 50(2) of the *Constitution*.
2. In the application she states that she was charged, convicted and sentenced for the offence of grievous harm contrary to Section 234 of the *Penal Code*.
3. The application is supported by an affidavit which is neither commissioned nor dated. She deposes that she is serving a sentence of eight years imprisonment and sentenced to serve 25 years in prison (sic). She deposes that she is a first offender; that she has reformed; is remorseful and that she undertakes not to commit any other offence. Further that she highly regrets her action and wishes to be released so as to rejoin her last born mentally challenged child who together with his siblings now live with their 80 year old grandmother. To that “affidavit” she has attached documents from the correctional facility recommending her for release on account of her good conduct and the courses undertaken.
4. The application is however vehemently opposed by the state/Respondent on grounds that this court is functus officio as the sentence was appealed to this court (differently constituted) in High Court Criminal Appeal No.E038 of 2023 but the appeal was dismissed.
5. The appeal was canvassed by way of written submissions and I have carefully considered the application, the “affidavit”; the annexures, the rival submissions, the cases cited thereat and the law. My findings is that this application has no merit.



6. Firstly, I have had opportunity to peruse the appeal filed by the Applicant to wit Appeal No. E038 of 2023. The same is a reported decision its citation being *Muthusi –vs Republic* [2024] KEHC 13149 (KLR). In that appeal the Applicant challenged both her conviction, which was as a result of a plea of guilty, and the sentence of imprisonment for eight (8) years. Upon hearing the appeal the court (Muigai J) dismissed it its entirety and stated as follows in regard to the sentence:

“(28) The Court has taken into account both aggravating and mitigating factors in Sentencing Guidelines 2016; the mitigating factors are the Appellant may have been 1<sup>st</sup> offender, remorseful for the offence and the fact that she pleaded guilty at the earliest opportunity. The aggravating factors relevant here are that Appellant caused serious physical or psychological effect on the victim; a disabled 11 year old child and hence targeted vulnerable group such as children, elderly persons and persons; the child with disability.

[29] The Appellant abused position of trust and authority as she was in charge of the disabled children. The medical report depicted multiple injuries on the victim which was wicked and harmful to the victim specifically and to the rest of the children. This Court finds the sentence appropriate in the circumstances as a deterrent sentence.

[30] Considering that the offence attracts a life sentence, I find that the Trial court gave a lenient sentence. Taking into consideration the circumstances of the case and the nature of the injuries, I will not interfere with the finding of the Trial Court.”

7. It is instructive that the said judgment being one of a court of concurrent jurisdiction this court has no jurisdiction to interfere with it. The Applicant’s remedy lies in an appeal or review to a higher court as provided in Article 165(6) of the *Constitution*. The revisionary jurisdiction of this court as provided in the sections cited by the Applicant only extends to decisions of courts below it but not those of superior courts. The Applicant having been heard on appeal in this court can only appeal to the Court of Appeal.

8. Moreover, even in matters arising from a court below where an Applicant was entitled to appeal but decided not to exercise that right they cannot seek revision in this court (see Section 364 (5) of the *Criminal Procedure Code* which states:-

“[Sect.364] Powers of High Court on revision

(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. Further, even in an application for revision the court can only set aside an order, finding or sentence of a subordinate court where it is shown that the same was incorrect, illegal or irregular which has not been demonstrated in this case. In other words the grounds cited by the Applicant herein, are not appropriate for an order for revision of the sentence more so when an appeal against the sentence has been heard and dismissed by a court on concurrent jurisdiction.

10. The upshot is that the application is not merited and it is dismissed and it is ordered that the applicant shall continue serving the sentence as imposed it is a lawful sentence.



**RULING DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 26<sup>TH</sup> DAY OF JUNE, 2025.**

**E. N. MAINA**

**JUDGE**

In the presence of:

Ms Kaburu for DPP/Respondent

Applicant – online from Langata Prison

Geoffrey - Court Assistant/Interpreter

