



**Marigu v Republic (Miscellaneous Criminal Application
E023 of 2023) [2025] KEHC 11569 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11569 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
MISCELLANEOUS CRIMINAL APPLICATION E023 OF 2023**

JN ONYIEGO, J

JULY 31, 2025

BETWEEN

MUNYOKI MARIGU APPLICANT

AND

REPUBLIC RESPONDENT

*(Being revision application against the sentence delivered on 30-05-25 by Hon.
X Baraka (RM) in Wajir PM's Court Criminal Case Number E023 of 2025)*

RULING

1. The applicant herein was charged with the offence of assault causing actual bodily contrary to Section 251 of the penal code. Particulars were that on 13th day of February 2025 at around 2140 hours, at Halane Location, Wajir East Sub-County within Wajir County, he assaulted one Juster Kanario thereby occasioning her actual bodily harm.
2. Having denied the charge, the matter proceeded to full trial. At the conclusion of the trial, he was convicted and subsequently sentenced to three years imprisonment. He has now moved to this court seeking review of his sentence on grounds that; he did not give proper mitigation during sentencing; he is a father of 8 children and the sole breadwinner; his children have become street children.
3. Basically, the applicant is seeking revision of his sentence to enable him get out of prison. In response, the respondent opposed the application on grounds that the sentence is legal and appropriate. Counsel however urged the court to consider the period spent in remand custody.
4. I have considered the application herein and the response thereof. The law governing revision in a criminal case is captured under Section 362 and 364 of the CPC. Section 362 and 364 provides as follows;

“ 362. Power of 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 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.
 - (c) in proceedings under section 203 or 296(2) of the Panel Code (Cap. 63), the *Prevention of Terrorism Act* (Cap. 59B), the *Narcotic Drugs and Psychotropic Substances (Control) Act* (Cap. 245), the Prevention of Organized Crimes Act (Cap. 59), the *Proceeds of Crime and Anti-Money Laundering Act* (Cap. 59A), the *Sexual Offences Act* (Cap. 63A) and the *Counter-Trafficking in Persons Act* (Cap. 61), 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.
5. It is clear from the above provisions that an application for review of sentence can be entertained only for purposes of the court satisfying itself as to the correctness, legality or propriety of the proceedings. Section 364(5) of the CPC is emphatic that no application for revision should be entertained where an appeal lies from a sentence or order. This position was espoused in Criminal Revision number 194 of 2023 Kisii High court in the case of Barongo Siany Atembe vs Republic.
6. From the record, the court is merely being asked to exercise mercy on the applicant. There is no justification to interfere with the sentence. However, on the question whether Section 333(2) of the CPC was considered, the record is clear. The court did direct remand period be deducted but failed to state the specific period. The applicant was arraigned in court on 27-02-2025 and sentenced on 30-05-2025. He was therefore in remand custody for 3 months and 3 days.
7. In view of the above, the period spent in remand custody shall be deducted from three years imprisonment term when computing sentence. In a nut shell, the revision application herein partially fails and partially succeeds only to the extent that the period spent in remand custody be considered when computing sentences.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 31ST DAY OF JULY 2025

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J. N. ONYIEGO

JUDGE

