



REPUBLIC OF KENYA



KENYA LAW
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**Obima v Republic (Criminal Revision E027 of 2025)
[2025] KEHC 11713 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11713 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CRIMINAL REVISION E027 OF 2025
FN MUCHEMI, J
JULY 31, 2025**

BETWEEN

TABISA NAFULA OBIMA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Brief Facts

1. The application for determination is undated and seeks for the honourable court to exercise its discretion in revision of the judgment and sentence in Ruiru Senior Principal Magistrate's Court Criminal Case No. 954 of 2024.
2. The applicant states that she was charged with the offence of grievous harm contrary to Section 234 of the Penal Code. The applicant further states that she pleaded guilty to the charges and was sentenced to serve 2 ½ years custodial sentence.
3. The applicant states that she is a first offender and has never collided with the law before. She further states that she has spent ten (10) months in custody from the date of her conviction being 9th May 2024 and during custody she has received counselling which has made her regret her actions.
4. The applicant further states that she is a widow blessed with four children aged 21 years, 19 years, 15 years and 13 years. The applicant therefore urges the court to review her sentence and release her or grant her a non-custodial sentence for the remainder of her sentence.
5. In opposition to the application, the respondent filed Grounds of Opposition dated 12th June 2025 and states that the applicant was charged with the offence of grievous harm contrary to Section 234 of the Penal Code whereas she pleaded guilty and was sentenced to two and a half years imprisonment



which was lenient. Being aggrieved by the said decision, the applicant filed the instant application for review of sentence.

6. The respondent submits that the applicant has not argued or suggested that the sentence is manifestly harsh and excessive, or its illegal or improper, or that the trial court acted on the wrong principle or took into account irrelevant factors in sentencing or that the proceedings were irregular or in violation of her right in fundamental freedom. The respondent argues that the applicant has only made generalized reasons which do not suffice interference with the discretion of the trial court in sentencing or warranting upsetting the sentence imposed by the trial court.
7. The respondent submits that from the trial court record, it is evident that the trial court considered the applicant's mitigation and the pre-sentence report and concluded that she was unable to serve a non custodial sentence and she is in need of rehabilitation as well as deterrence. Furthermore, the trial court considered both mitigating and aggravating circumstances but the aggravating circumstances outweighed the mitigating circumstances hence the sentence by the trial court, which is proper and legal.
8. The respondent states that the offence the applicant was found guilty is a felony which attracts a sentence of life imprisonment and thus the trial court was lenient.
9. Parties disposed of the application by way of written submissions.

The Applicant's Submissions

10. The applicant relies on the case of Francis Muruatetu vs Republic Petition No. 15 & 16 of 2015 and the Sentencing Policy Guidelines 2016 and submits that she is 43 years old and very remorseful for having assaulted the complainant who is her cousin's wife. She urges the court to allow her to be reunited with her four children who were relying on her for survival prior to her arrest.
11. The applicant submits that at the time of her arrest she was suffering from chest complications which have worsened due to congestion in prison and exposure to cold. The applicant further submits that she has taken some rehabilitation programmed while in prison. The applicant prays that the court substitute her remaining sentence with a non custodial sentence preferably probation or conditional release under Section 35(1) of the Penal Code.

The Respondent's Submissions

12. The respondent reiterates the contents of her affidavit and submits that the applicant has not placed before the court any material to warrant review of her sentence. The reasons advanced by the applicant are that she is reformed and should get the benefit of reduced sentence or non-custodial sentence. The respondent argues that the applicant has not stated that the sentence is manifestly harsh and excessive or that it was illegal or improper, or that the court acted on wrong principle or omitted relevant factors in sentencing, or that the proceedings was irregular or in violation of her rights or fundamental freedoms. The applicant only gave generalized reasons which do not suffice interference with the discretion of the trial court in sentencing or warrant upsetting the sentence imposed by the lower court.

The Law.

13. The High Court's power of revision is set out in Article 165 (6) and (7) which 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 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.
14. Section 362 of the Criminal Procedure Code provides:-
- “The High Court may call 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.”
15. Section 364(1) of the Criminal Procedure Code provides:-
- “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 his 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 section 354, 357 and 358, and may enhance 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.
16. The revisionary jurisdiction of the High Court was discussed by Odunga J in a persuasive decision of Joseph Nduvi Mbuvi vs Republic [2019] eKLR:-
- “In my considered view, the object of the revisional jurisdiction of the High Court is to enable the high Court in appropriate cases, whether during the pendency of the proceedings in the subordinate court or at the conclusion of the proceedings to correct manifest irregularities or illegalities and give appropriate directions on the manner in which the trial, if still ongoing, should be proceeded with. In other words, the High Court’s revisionary jurisdiction includes ensuring that where the proceeding in the lower court has been legally derailed, necessary directions are given to bring the same back on track so that the trial proceeds towards its intended destination without hitches. Not only is the jurisdiction exercisable where the subordinate court has made a finding, sentence or order but goes on to state that it is also exercisable to determine the regularity of any proceedings of any such subordinate court as well.”
17. Similarly Nyakundi J in Prosecutor vs Stephen Lesinko [2018] eKLR outlined the principles which will guide a court when examining the issues pertaining to section 362 of the Criminal Procedure Code as follows:-
- a. Where the decision is grossly erroneous;
 - b. Where there is no compliance with the provisions of the law;
 - c. Where the finding of fact affecting the decision is not based on evidence or it is result of misreading or non-reading of evidence on record;
 - d. Where the material evidence on the parties is not considered; and



- e. Where the judicial discretion is exercised arbitrarily or perversely if the lower court ignores facts and tries the accused of lesser offence.
18. The above provisions convey jurisdiction to this court to exercise revisionary powers in respect of orders of the subordinate courts. This court is therefore possessed of the requisite jurisdiction to hear and determine this application.
19. The applicant was arrested on 11th April 2024 and charged with the offence of grievous harm contrary to Section 234 of the Penal Code to which she pleaded guilty and was sentenced to 2 ½ years imprisonment. During mitigation, the respondent informed the trial court that the applicant had no prior records and the applicant told the court that she was driven by emotions during the commission of the offence. She sought forgiveness. The trial court scheduled the matter for sentencing on 9th May 2024 after the presentence report was availed. On 9th May 2024, the trial magistrate considered the presentencing report and sentenced the applicant to 2 ½ years imprisonment. From the record, it is evident that the trial court took into account the mitigation of the applicant and the respondent and considered the pre-sentence report. The trial magistrate noted that the applicant was unstable to serve a non custodial sentence and in his view, she was in need for rehabilitation as well as deterrence. Accordingly, the sentence meted out against the applicant as is provided in Section 234 of the Penal Code is within the law. The applicant did not say that the sentence meted against her is harsh and excessive or that the sentence imposed was illegal or improper or that the trial court took into account irrelevant factors in sentencing.
20. It is therefore, my considered view that the applicant has not demonstrated any reasons to warrant this court's supervisory jurisdiction upon the trial court. This case falls outside the ambit of Section 362 and 364 of the Criminal Procedure Code.
21. Accordingly, I find that the application lacks merit and is hereby dismissed.
22. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 31ST DAY OF JULY 2025.

F. MUCHEMI

JUDGE

