



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kaigera v Republic (Criminal Revision E007 of 2025)  
[2025] KEHC 11580 (KLR) (29 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11580 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT CHUKA  
CRIMINAL REVISION E007 OF 2025**

**RL KORIR, J  
JULY 29, 2025**

**BETWEEN**

**FREDRICK MURIUKI KAIGERA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant Fredrick Muriuki Kaigera was charged with the offence of grievous harm contrary to Section 234 of the [Penal Code](#). He was alleged to have unlawfully caused grievous harm to Alla Murithi on 11<sup>th</sup> November, 2023 at Wiru village Chogoria Location, Maara Sub-County.
2. The Applicant was presented before Hon. Ocharo, SPM for plea on 18<sup>th</sup> March 2024. He pleaded guilty and was convicted and sentenced to serve 15 years' imprisonment. The Applicant now seeks this court's intervention to reduce his sentence.
3. In his Application dated 10<sup>th</sup> February, 2025, the Applicant stated that he does not dispute the conviction. Instead he has listed mitigating factors for the court's consideration as follows. That he was the sole bread winner of his family; was remorseful; that the complainant and his family had forgiven him; that he had benefited from the rehabilitation programs in prison and was ready for community reintegration.
4. In his supporting affidavit, the Applicant reiterates the grounds already set out in the Application while seeking leniency of the court.
5. The Application is opposed by the State. In submissions dated 26<sup>th</sup> March, 2025 the learned Prosecution Counsel stated that the sentence meted out was lawful and served the dual purpose of retribution and deterrence.



6. At the hearing of the Application on 16<sup>th</sup> July 2025, the Applicant made oral submissions. He stated that he was epileptic. That he had left two children at home who were suffering as their mother had abandoned them when he was imprisoned. He urged to be released now that he was sufficiently rehabilitated.

### **Analysis and determination**

7. This court's revisionary jurisdiction is provided under Section 362 of *Criminal Procedure Code* which states:-

“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.”

8. I called for and examined the trial file. The record shows that the Applicant was initially presented for plea on 16<sup>th</sup> November, 2023. He admitted the charge when it was read to him but disputed the facts leading to a plea of not guilty. However, when the case came up for trial on 18<sup>th</sup> March, 2024, the Applicant changed his plea and pleaded guilty. He was convicted on his own guilty plea.

9. Upon mitigation, the Applicant was sentence to 15 years' imprisonment.

10. I have looked at the plea taking process and I am satisfied that it followed the correct procedure and there was nothing irregular about the proceedings.

11. The Applicant insists that he was not interested in an appeal and only prayed that his sentence be reduced.

12. Section 364 of the *Criminal Procedure Code* gives this court the power to consider sentence. It provides:-

“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.
- (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.”

13. I am persuaded by the authority above to find that the Applicant in this case ought to have appealed his conviction and sentence. His statement that he did not wish to appeal lacks legal basis.

14. In the case of *Joseph Nduvi Mbuvi v Republic* (2019) eKLR, Odunga J (as he then was) held that:-

“In my view, the revisionary jurisdiction of the High Court should only be invoked where there was glaring acts or omissions but should not be substitute for an appeal. In other words, parties should not argue an appeal under the guise of a revision. It is for this reason



that the decision whether or not to hear the parties or their advocates is discretionary save for where the orders intended to be made will prejudice the accused person. As was stated by the High Court of Malaysia in *Public Prosecutor v. Mubari Bin Mohd Jani And Another* [1996] 4 LRC 728 AT 734, 735:-

“The powers of the High Court in revision are amply provided under Section 325 of the *Criminal Procedure Code* subject only to subsections (ii) and (iii) thereof. The object of revisionary powers of the High Court is to confer upon the High Court a kind of “paternal or supervisory jurisdiction” in order to correct or prevent a miscarriage of justice. In a revision the main question to be considered is whether substantial justice has been done or will be done and whether any order made by the lower court should be interfered with in the interest of justice... If we have been entrusted with the responsibility of a wide discretion, we should be the last to attempt to fetter that discretion.... This discretion, like all other judicial discretions ought, as far as practicable. To be left untrammelled and free, so as to be fairly exercised according to the exigencies of each case..”

15. The Applicant was sentenced under Section 234 which provides:

“234. Any person who does grievous harm to another is guilty of a felony and is liable to imprisonment for life.”

16. The trial court in sentencing the Applicant stated:-

“I note that the complainant one Allan Muriithi a young man aged 30 years lost his left hand at the level of 1/3 which the accused person chopped off by use of a sharp object. I have seen the complainant in court. Obviously, the complainant’s quality of life has been greatly and adversely affected by this very barbaric, heinous and callous act of the accused person...”

17. The sentence further shows that the court took into consideration the mitigation of the Accused and the fact that he was a first offender. Considering the seriousness of the offence, it is clear to me that the sentence was lenient. I agree with the trial court that the Accused (now Applicant) would benefit from prison rehabilitation. Having been sentenced only a year ago, it is doubtful that he has in the short time benefited from prison rehabilitation.

18. It is trite that sentencing is a discretion of the trial court and an appellate court should be slow to interfere with such discretion. These principles were succinctly explained by the Court of Appeal in *Bernard Kimani Gacheru v. Republic* [2002] eKLR which held that:-

“It is now settled law, following several authorities by this Court and by 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. Even if, the Appellate Court feels that the sentence is heavy and that the Appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, anyone of the matters already stated is shown to exist.”

19. In the present case I have already found that the Applicant shied away from appealing his sentence. It is my further finding that I have no reason to interfere with the sentence in this revision.



20. The Application is dismissed.

Orders accordingly.

**RULING DELIVERED, DATED AND SIGNED AT CHUKA THIS 29<sup>TH</sup> DAY OF JULY, 2025.**

.....

**R. LAGAT - KORIR**

**JUDGE**

Ruling delivered in the presence of Applicant acting in person, Ms Rukunga for the Republic; Muriuki (Court Assistant)

