



**Kimani v Republic (Miscellaneous Criminal Application  
E167 of 2024) [2025] KEHC 11113 (KLR) (29 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11113 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
MISCELLANEOUS CRIMINAL APPLICATION E167 OF 2024**

**PN GICHOHI, J**

**JULY 29, 2025**

**BETWEEN**

**DAVID MWANGI KIMANI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Revision of Sentence imposed by H.K.Chemitei, J on 15th  
December, 2021 in Nakuru HCCR. Appeal No. 15 of 2020)*

**RULING**

1. Vide an undated Notice of Motion filed on 3<sup>rd</sup> June , 2025, the Applicant has relied on Section 354 and 364 of the Criminal Procedure Code, Article 43 (1) (a) of the Constitution of Kenya and urged this Court to review the sentence of 15 years imprisonment imposed on him by the honourable Judge in Nakuru Criminal Appeal No.15 of 2020. His reasons are that at the time of the arrest, he was a young person of tender age and that at the moment, he is suffering from bi-frontal encephalomalacia with haematoma diabetes mellitus, hypertension and peptic ulcer diabetes for which he has been undergoing treatment.
2. He states that his condition has deteriorated while he is in prison and therefore seeks that he be granted a non- custodial sentence so as to get proper medical attention.
3. The application is opposed by Mr. Kihara for the Respondent who has filed a Replying Affidavit sworn on 7<sup>th</sup> July 2025 on the grounds that this Court lacks jurisdiction to review a sentence passed by a Court of concurrent jurisdiction.
4. In his Further Affidavit sworn on 24<sup>th</sup> July 2025, the Applicant's position is that this Court has jurisdiction to grant his prayer for a non-custodial sentence so as to access specialised treatment and in support of his application, he has attached documents and certificates to show that he has undertaken various rehabilitation programs including:-Completion of Emmaus Bible School -



(Diploma).Participation in fellowship International Journal ProgramCompletion of Level I and 2 of Lamp Light Kenya.Participation in Gospel Faith Messenger MinistryCompletion of the World Bible School Program.

5. He has also attached a Medical Report from the Kenya Prisons Service, dated 17th July, 2025 where Victor Kimtai SGT/Nurse details the health status of adult inmate David Mwangi Kimani.
6. The report states that the Applicant “has a complex medical history, including an 8-year diagnosis of diabetes managed with Metformin and Glibenimide, and recurrent asthma attacks treated with a Ventolin inhaler and corticosteroids. He is also being monitored for Bi-frontal gyri recti Encephalopathy, requiring surgical review at Nakuru County Teaching and Referral Hospital. Additionally, Mr. Kimani has been hypertensive for nine years, taking Losartan H, Carvedilol, and Frusemide, and suffers from chronic epigastric pain with bloating and vomiting that necessitates dietary and lifestyle adjustments.”
7. The Applicant therefore argues that this Court has inherent jurisdiction to review the sentence so as to meet the ends of justice.
8. The background of this application is that the Applicant was arraigned before the trial court in Nakuru CMC S.O . No. 214 of 2018 where he was charged with the offense of defilement contrary to Section 8 (1) , (3) of the *Sexual Offences Act* No. 3 of 2006.
9. He faced an alternative Count of committing an indecent act with a child contrary to section 11(1) of the *Sexual Offences Act* No. 3 of 2006.
10. The child was aged 16 years. He was tried, convicted and sentenced to serve 20 years imprisonment
11. Aggrieved by the judgment, he appealed to this Court and H. K. Chemitei, J upheld the conviction but reduced the sentence to 15 years imprisonment with effect from 19<sup>th</sup> November 2018.
12. His issue in this case is medical. It is his right under Article 43 of the *Constitution* on economic and social rights. In particular, sub-Article (1) (a) and 2 which provides that :-
  1. Every person has the right—
    - a. to the highest attainable standard of health, which includes the right to health care services, including reproductive health care; ...
  2. A person shall not be denied emergency medical treatment.
13. He emphasised that by granting the prayers sought, the Court will in essence be reviewing the sentence meted, which issue can only be determined in the Court of Appeal and therefore, this application lacks merit.

### **Determination**

14. It is clear that the Prison facility where the Applicant is held has the responsibility to take a sick prisoner to hospital. From the foregoing, the issue for determination in the application herein is whether this Court should review the sentence of this Court differently constituted.
15. Section 364 of the *Criminal Procedure Code* provides as follows:-
  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. (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.”

16. Further Article 165 (6) of the *Constitution*, provides that:-

“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.”

17. In the present case, the revision being sought here is in regard to a sentence by a court of concurrent jurisdiction and therefore, this Court lacks jurisdiction to sit on its review. The Applicant’s recourse lay in an appeal to the Court of Appeal and not through a revision.

18. In conclusion therefore, Applicant’s Notice of Motion filed on 3<sup>rd</sup> June 2025 is hereby struck out.

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

**PATRICIA GICHOHI**

**JUDGE**

In the presence of:

David Mwangi Kimani-Applicant

Mr. Kihara for the Respondent

Ruto, Court Assistant

