



REPUBLIC OF KENYA



**KENYA LAW**  
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**Simiyu v Republic (Criminal Revision E180 of 2025)  
[2025] KEHC 11607 (KLR) (4 August 2025) (Ruling)**

Neutral citation: [2025] KEHC 11607 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL REVISION E180 OF 2025  
RN NYAKUNDI, J  
AUGUST 4, 2025**

**BETWEEN**

**BENARD WAWIRE SIMIYU ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being a Revision from the Judgement of Hon. C. Obulutsa (CM) on 20.11.2015)*

**RULING**

1. The Applicant herein was charged with the offence of manslaughter contrary to section 202 of the *Penal code*. The Particulars of the offence are that on 15<sup>th</sup> December 2008 at Lunyito village, he unlawfully killed Rael Musaba Barasa.
2. He pleaded not guilty to the offence and upon the conclusion of a full trial, he was convicted and sentenced to 30 years' imprisonment. He has now applied for his sentence to be reviewed and the remainder of the sentence of 4 months' Sirende Primary School.
3. The Applicant filed a Sentence Review Report dated 21<sup>st</sup> July 2025 which was coached as follows: -

Current Home and Personal Circumstances

My Lord, the inmate is the son of Wilberforce Wawire and Sophie Wawire, the family owns a nine-acre piece of land utilized for farming. He is the 5<sup>th</sup> Born in a Family of eight. He came from a polygamous family, the father had three wives where the inmate's mother is the first wife. He attended Kapsoya primary and did his KCPE in 1987 then joined Kavaywa boys where he did his KCSE in 1993. He married Philisters Gavore they have six Children who are now adults. Before his arrest he was a driver. He has been visited by his wife and children in all the three prisons he has been.

Prison Assessment, Rehabilitation, and Re-integration



Your Lordship, the inmate enrolled and attained diploma in theology, certificate in Crime si poa. Psycho education and spiritual education certificate, Guidance and counselling certificate. Rodi Kenya and also worked at the tree nursery in Nyona during his stay in prison. Prison authorities have nothing negative to say about him.

#### Offender's Attitude Towards Non-custodial Measures

My Lordship, the inmate is very remorseful and pleads for forgiveness, he is very much ready to pay for his deeds through community service at Sirende primary school.

#### Recommendations

Your Lordship, with regards to the above information. The Intimate is remorseful and is willing to perform unpaid public work. we recommend that he be allowed to carry out the same at Sirende Primary for a period of four Months though has issues with his back.

### **Decision**

4. The applicant was initially sentenced to 30 years' imprisonment for the offence of manslaughter contrary to section 202 of the *Penal Code*. On appeal, the sentence was reduced to 15 years' imprisonment, as the trial court had sentenced the applicant on 20th November 2015, but the learned judge on appeal considered the sentence to be harsh and punitive. He has now moved this court under section 50 (2) (p) (q) and (6) (a) (b) of the *constitution*. This is to be read in conjunction with section 362 & 364 of the *CPC*.
5. The object of the provisions of revision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinize the orders which upon the face of them bear a token of careful consideration and appear to be in accordance with law. Revisionary jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes but merely indicative. Each case would have to be determined on its own merits. Another well-accepted norm is that the revisionary jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be exercised against an interim or interlocutory order.  
  
“Normally, revisionary jurisdiction should be exercised on a question of law. However, when factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. Basically, the power is required to be exercised so that justice is done and there is no abuse of power by the court. Merely an apprehension or suspicion of the same would not be a sufficient ground for interference in such cases.” See *Amit Kapoor v. Ramesh Chander*, (2012) 9 SCC 460
6. This case is not maintainable on CSO as recommended by the probation officer. It is befitting to grant pre-trial detention credit under section 333(2) of the *CPC*. The court in *Peter Tony Wambua & 17 Others v. Attorney General* [2017] eKLR. This sections states that a sentence unless otherwise specified in the code, is deemed to commence from and include the whole of the day on which it was pronounced, subject to section 38 of the *penal code*. In simpler terms, the sentence starts on the day it's given, unless a specific law or the code itself says otherwise. This is an important exception for section 333(2) of the *code* makes provisions that the pre-trial decision credit be considered for purposes of giving effect to the time already served in remand custody before finalization of one's trial on the merits. The causes of pre-trial detention in Kenya are many notwithstanding the provisions of Art 49, 22, 24,



25, 26, 27, 28, 29 of the constitution which embodies some elements of the Bill of Rights. It is not principally defects in national legal provisions that cause pre-trial injustice, but wider systemic factors relating to how the law is applied (or misapplied). These wider factors are often closely intertwined. They include the socio-economic and political context in which decisions are made and policies applied in response to law-breaking. Poverty, unemployment, homelessness and substance misuse form the backdrop to a large proportion of crime. People backgrounds of disadvantage are more likely to be arrested and more likely to be detained pre-trial; they are less likely to have the means to pay bail or comply with other conditions acceptable to the court, or to be able to afford good legal representation.

7. From the perspective of section 333(2) of the Criminal Procedure Code, there is no evidence that the trial court factored the credit period spent in pre-trial detention by the applicant. The particular circumstances of this case warrant the incorporation of this factor in computing the overall sentence, in order to satisfy the requirements of the Criminal Procedure Code within the legislative scheme of section 333(2). As a consequence, the applicant benefits from early release from prison custody and is at liberty unless otherwise lawfully held.

**DATED, SIGNED AND DELIVERED VIA CTS AT ELDORET THIS 4<sup>TH</sup> AUGUST 2025**

**R. NYAKUNDI**

**JUDGE**

Representation:

M/s Sidi for the State

