



REPUBLIC OF KENYA



**Kabom v Republic (Revision Case E012 of 2024)  
[2024] KEHC 5981 (KLR) (27 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5981 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KABARNET  
REVISION CASE E012 OF 2024  
RB NGETICH, J  
MAY 27, 2024**

**BETWEEN**

**DICKSON KAKUKO 'A' KABOM ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant together with another was charged with the offence of robbery with violence contrary to section 296(2) of the *Penal Code*. The particulars of the charge were that the accused and another on the 30<sup>th</sup>/31<sup>st</sup> of January, 2017 at Kambi Kilima in Marigat Town in Baringo South Sub-county, within Baringo County, jointly while armed with an offensive weapon namely a sharp object, robbed Victor Koech Kiprop of a motorcycle registration No. KMDX xxxx Boxer 100 red in colour valued at Kshs.92,500/= and at, or immediately before or during the time of the said robbery killed the said Victor Koech Kiprop.
2. The applicant denied the charge and the matter was set down for full trial with the prosecution calling 13 witnesses in support of the charges against the accused. The court found that the prosecution had proved a prima facie case against the accused and when the applicant was placed on his defence, he gave sworn statement and did not call any witness. By a judgement delivered on the March 21, 2018, the trial court found the Applicant guilty of the offence, convicted and sentenced him to life imprisonment.
3. Dissatisfied with the conviction and the sentence of the trial court, the Applicant lodged an appeal on both conviction and sentence in the High court at Kabarnet being Criminal Appeal No.21 of 2018 which appeal was dismissed in its entirety.

**Application for Review of Sentence**

4. The Applicant has now approached this court through a Notice of Motion Application brought under the provisions of Articles 2, 3(a), 19(2), 20(1) 22(1), 23(1),25(c), 26(1),27(10(4), 28 50(2)(p)



(q), 159(2) and 165(3) of the Constitution of Kenya, section 295 as read with section 296(2) of Penal Code seeking revision of sentence of life imprisonment.

5. Grounds on the face of the application are as follows: -
  - i. That his first appeal in HCCRA No 21 of 2018 Kabarnet High Court was dismissed in its entirety and he is ready to withdraw his appeal from court of appeal so as to pursue this application.
  - ii. That the High Court has competent jurisdiction to hear and determine this application under Article 165(3)(b) of the Constitution of Kenya 2010.
  - iii. That under the constitution of Kenya under Article 50 (2)(p)(q) an Applicant has a right to benefit from the least severe sentence and to have his sentence reviewed.
  - iv. That a life sentence contravenes section 216 and 389 of the Criminal Procedure Codes on mitigation and the values of sentencing as in the Sentence Policy guidelines 2016 Paragraph 4;1.
  - v. That under the provisions of the Constitution of Kenya 2010 and Practice and Procedure Rules 2010 this Court has power to hear and determine infringements of fundamental rights and award remedies.
6. When the matter came up for hearing on the March 12, 2024, the applicant informed the court that he has been in prison for 7 years now and has learnt biblical teachings and has also trained as a carpenter and is yet to be issued with a certificate.
7. This court called for a social inquiry report to be prepared and filed by the Probation Officer and the matter to be mentioned on April 30, 2024 to confirm filing of the report.
8. Social inquiry report was filed on May 2, 2024. From the report, the applicant is aged 31 years old and was convicted at age of 24 years old. He had formal education up to form four but had not trained in any form of technical skill. Prior to his conviction, he ventured in cattle business that is rearing, buying and selling. He is single and has no dependant children. His father passed on last year and his mother is elderly. He is the first born in a family of five siblings and he is the only one with history of crime and none of his family members has visited him in Naivasha prison due to travel challenges. The mother and applicant's friend confirmed that the applicant is not married and attributed the offence to peer pressure and support review of sentence.
9. From the report, the applicant is asthmatic, he is mainly affected by cold and dust and is on regular medication while in custody. He has no dependency on any substance.
10. The circumstances of the offence are that the body of the victim was discovered outside his house in a pool of blood with neck slit on the material day. A tip off by a member of the public who overheard a conversation between the accused and his sister over the grisly murder exposed perpetrators of the offence; they brutally killed the deceased in his house and thereafter made away with his motorcycle.
11. The applicant who has been in prison for a period of 7 years regrets the offence and attributes it to influence of alcohol. He prays for forgiveness from the affected family and the court. He submits that the sentence of life imprisonment was harsh and prays for determinate sentence.
12. The deceased's father stated that the deceased was 26-year-old family man and operated motor cycle taxi and at the time of interview, he did not know the whereabouts of the deceased's wife and the child. He is still very bitter having lost a son who was the sole bread winner and he is of the view that his



son was killed like an animal. He is opposed to revision of sentence and is content with life sentence imposed by the trial court.

13. The local administrator does not oppose the Applicant/inmate's sentence being reduced. They are however of the view that the 7-year period the applicant has served is still very low. The prison welfare department recommended a favorable sentence review on ground that the applicant has been disciplined while in custody. They confirm that he is currently attached to industry section doing carpentry and he has several certificates in bible studies, prisoner's journey and evangelism.
14. The Probation Officer states that the inmate before court is currently at the age of 31 years; he was convicted at his youthful age of 24 years. He has been in custody for the last six years and one year in remand. He has not started his family and he had no other record of crime, in his attitude; he supports review of his sentence to a definite period; that the applicant has undertaken his rehabilitation positively as shown by several certificate he has acquired while in prison.
15. The Applicant's/Inmate's family pray for non- custodial sentence on ground that he was the family bread winner and a first-time offender. The community did not oppose his sentence being reduced but opposed non- custodial sentence indicating the period in custody is still very low; prison welfare recommended for favorable sentence review.

### **Analysis and Determination**

16. The application before this court invokes the revisional jurisdiction of this court which gives the court powers, in appropriate cases, to review and vary any orders, decision or sentence passed by the trial court if the court was satisfied that the impugned order, decision or sentence was illegal or was a product of an error or impropriety on the part of the trial court. If the court was so satisfied, the law mandated it to make appropriate orders to correct the impugned order, decision or sentence and align it with the law. The above is the import of section 362 as read with section 364 of the [\*Criminal Procedure Code\*](#).
17. Supreme Court considered the issue of review of judgements and orders in [\*Fredrick Otieno Outa v Jared Odoyo Okello & 3 others\*](#) [2017] eKLR and held that:

“...we hold that as a general rule, the Supreme Court has no jurisdiction to sit on appeal over its own decisions, nor to review its decisions, other than in the manner already stated in paragraph (90) above. However, in exercise of its inherent powers, this Court may, upon application by a party, or on its own motion, review, any of its Judgments, Rulings or Orders, in exceptional circumstances, so as to meet the ends of justice. Such circumstances shall be limited to situations where:

  - a. the Judgment, Ruling, or Order, is obtained, by fraud or deceit;
  - b. the Judgment, Ruling, or Order, is a nullity, such as, when the Court itself was not competent;
  - c. the Court was misled into giving Judgment, Ruling or Order, under a mistaken belief that the parties had consented thereto;
  - d. the Judgment or Ruling, was rendered, on the basis of a repealed law, or as a result of, a deliberately concealed statutory provision.”
18. In view of the above, I take note of the fact that after this court made determination on the criminal appeal HCCRA No 21 of 2018 Kabarnet, there has been change of jurisprudence in respect to life sentence following decision of the court of Appeal in Malindi Court of Appeal Criminal



Appeal No. 12 of 2021, *Julius Kitsao Manyeso versus Republic* where the court declared life sentence unconstitutional. In view of change in jurisprudence, the applicant has a right to approach this court for review of sentence.

19. I have considered Probation Officer's report. From the report, the family of the deceased are still bitter in view of the inhuman way the deceased who was also robbed was killed. The offence has however been attributed to peer pressure and from the report from prison, the applicant who was 24 years old at the time of the offence has repented, he has trained in biblical teachings and carpentry. However, in view of the fact that the family of the deceased have not healed, I will revise the life sentence to determinate imprisonment term of 25 years.

20. Final orders: -

1. Application for review of sentence is hereby allowed
2. Life sentence is hereby set aside
3. The applicant to serve 25 years imprisonment
4. The period served in remand and prison to be computed in the sentence above.

**RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 27<sup>TH</sup> DAY OF MAY 2024.**

.....

**RACHEL NGETICH**

**JUDGE**

In the presence of:

Elvis/Momanyi – Court Assistant.

Applicant present.

Ms. Ratemo for state

