



**Awil v Republic (Miscellaneous Criminal Application E001(B) of 2024)
[2024] KEHC 16165 (KLR) (19 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16165 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
MISCELLANEOUS CRIMINAL APPLICATION E001(B) OF 2024
JN ONYIEGO, J
DECEMBER 19, 2024**

BETWEEN

ABDIRIZACK ABDISHAKUR AWIL APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged with the offence of threatening to kill contrary to section 223(1) of the Penal Code. The particulars of the charge were that on 12.05.2022 at around 1830hrs at Hagadera refugee camp (BLOCK D -8) in Fafi Sub County, without lawful excuse he approached one Haweyo Ahmed Osman while armed with a knife and pointing at her and uttering words ‘if you will not give the cash I need I will stab you with this knife’ threatening to kill her.
2. On his own plea of guilt, he was sentenced to 5 years’ imprisonment. Subsequently, he approached this court vide chamber summons dated 19.01.2024 seeking reduction of his sentence.
3. The application was supported by the affidavit sworn on 19.01.2024 by the applicant urging that he has spent a period of one year in prison and that he had reformed. That he had undergone madrassa education which had enabled him transform into a good citizen. He averred that he is very remorseful for what transpired and regrets that the same occurred as a result of being under the influence of drugs. He urged that this court considers his prayers as he is the sole provider for his family.
4. The court directed that parties file written submissions. However, Mr. Okemwa, the learned prosecutor chose to argue his case orally while the applicant fully relied on his pleadings as filed.
5. Mr. Okemwa did not oppose the application urging that in as much as the applicant was charged with the offence herein, he had served two years in prison and that he was remorseful. According to him, the applicant ought to be considered for probation.



6. The court directed that a probation report be filed.
7. The probation officer, Joseph Nzioki filed a report dated 16.12.2024 wherein it was recommended that the applicant is suitable for a non-custodial sentence noting that he had since reformed. The probation officer urged that he be placed under Community Service Order for one year at Hagadera Police Station. However, it was equally noted that the complainant in this case, mother to the applicant had requested that the applicant be released sometime in the month of January or February, 2025. This is to enable the complainant who currently lives in Nairobi to return to Hagadera in the beginning of the year. This court was therefore urged to wait till the complainant is back at Hagadera so that it could release the applicant to her.
8. I have read and understood the application together with the respondent's submissions before me. From therein, it is my view that the issue for determination is whether this court ought to reduce the sentence meted out on the applicant.
9. Although the application was not opposed by the prosecution, the same does not mean that the court automatically grants the orders sought. It is trite that the same must be determined on its merits as the court reaches its own independent determination. [See Gideon Sitelu Konchellah & 2 others vs Julius Lekakeny ole Sunkuli [2018] eKLR].
10. It is pertinent to note that the High Court's supervisory jurisdiction which includes its revision jurisdiction is limited to revision of orders or sentences passed by subordinate courts in criminal proceedings. A reading of sections 362 to 367 of the Criminal Procedure Code makes this legal position very clear.
11. This position is further buttressed by article 165 (6) of *the Constitution* which provides that:

“(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 not over a superior court.”
12. Therefore, the jurisdiction of the High Court on revision is to correct manifest irregularities and illegalities. The applicant has not pointed out any irregularities or illegalities in reference to the sentence meted out by the trial court. He is simply urging the court to consider that he has since reformed while in prison thus seeking for leniency to serve the rest of the period under probation.
13. A review of this application in totality projects an applicant who is seeking to be considered for reduction of a sentence that is alleged to be manifestly harsh coupled with the allegation that he has since reformed while in prison. It is my clear view that in matters where a party ought to appeal against a determination having been aggrieved, then the right channel as provided for by the law is an appeal hence not revision.
14. By reason of the forgoing, I find that the application herein seeking orders of review of sentence is an abuse of the court process. Accordingly, the application is dismissed for lack of Merit. However, although not requested for, I have noted that the applicant was in remand custody from 15-05-2022 until 05-10-2022 when he was sentenced translating to four months and 20 days. Pursuant to section 333(2) of the CPC, the said period shall be taken into account when computing sentence.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 19TH DAY OF DECEMBER 2024

J. N. ONYIEGO

JUDGE

