Nyokabi v Republic & another (Criminal Miscellaneous Application E124 of 2024) [2025] KEHC 16067 (KLR) (4 November 2025) (Ruling)

Neutral citation: [2025] KEHC 16067 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MACHAKOS

CRIMINAL MISCELLANEOUS APPLICATION E124 OF 2024

NIO ADAGI, J

NOVEMBER 4, 2025

BETWEEN

SAMUEL MUNYAMBU NYOKABI ..... APPLICANT

AND

REPUBLIC ..... 1ST RESPONDENT

GEORFFEREY MULEMBO ..... 2ND RESPONDENT

RULING

Introduction:

1. By a Notice of Motion application dated 5th November 2024 brought under the provisions of Article 25(c), 48, 50(1)(9), 165 (6) and (7) and 259(1) of *the Constitution* of Kenya 2010, Section 362 and 364 1 a o the Criminal Procedure Code Cap 75 of Laws of Kenya Section 92 and 30 of the *Victim Protection Act* No. 17 of 2014 and other enabling laws. The application seeks for orders that:-

    a. Spent

    b. Spent

    c. The court be pleased to revise, vary and/or set aside the orders and Judgement issued by Hon Khapoya Benson (S.P.M) in Kithimani in Criminal Case Number MCCR/EOOI/ 2022; Republic vs Geoffrey Mulembo Alias Jeff and order that the trial proceed to its logical conclusion before any other court of competent jurisdiction with the exclusion of the prosecutors involved in the said Plea Bargain.

    d. Any other orders the court deems just and fit to grant in the interest of justice.

    e. Costs of the application be in the cause.

2. The application is supported by the supporting affidavit of Samuel Munyambu Nyokabi, the Applicant and premised on grounds among others that :-

   a. The Applicant is the victim/complainant herein who has a constitutional right, under Article 50 (90) and sections (4(2)(b) and 9(2) of the *Victim Protection Act* 2014 to be actively heard in a trial and have his views considered in the continuation a criminal trial and before preparation of any plea-bargaining agreement.

   b. Article 49 is closely knit with the applicant's constitutional right to fair hearing under Article 50 of *the Constitution*

   c. The Accused person was arrested on 24th December 2021, and eventually charged before a Senior Principal Magistrate Court at Kithimani Law Courts with the offence of Robbery with Violent? Contrary to Section 295 as read with Section 296 (2) the Penal Code.

   d. The matter did not go to full hearing as the Accused was presented with a plea bargain agreement by the prosecution, which would see him plead guilty and in turn received lesser sentence of five-years

   e. The prosecution did not lay before court the factual basis of the plea agreement and the consequently the court did not determine judiciously to be satisfied that there exists a factual basis for the plea bargain agreements negotiated by parties.

   f. That court did not consider that Section 4(2)(b) of the *Witness protection Act* provides that; ▬ "Every victim is as far as possible given an opportunity to be heard and to respond before any decisions affecting him or her is taken."

   g. During plea bargain negotiation, the Applicant through his counsel who was watching brief for him was opposed to the plea bargain for the reasons that the five-year proposed term did not border on a just penalty and was equally apprehensive that the accused would revenge since they know each other. The same would continually torture him psychologically.

   h. Further, Counsel explained to court through is submission that the complainant had in fact decided to shift and leave his former place of work where they used to be workmates with the accused person for fear of being targeted in the event the accused person was freed by court.

   i. The Hon. Learned Magistrate did not consider the pertinent issues raised by the applicant, who expressed his reservation with the plea bargain as his safety was not guaranteed. Further his voice was not heard nor were his reservations addressed as per his right to be heard as provided for under Section 9 of the *Victim Protection Act* 2014.

   j. That the Applicant is still apprehensive that the penalty imposed on the accused person was not commensurate with the moral blameworthiness of the offender nor was it guided by the principles of sentencing to wit providing for reparation or harm done to victims.

Response to application

3. The application is opposed by the 1st Respondent vide its grounds of opposition dated 25th November 2024 on the grounds that:-

   a. That the orders sought are incapable of being granted by this Honourable Court.

   b. That the Applicant lacks locus standi to seek the orders sought before this Honourable Court.

c. That the application filed herein is not only misconceived and bad in law but also misplaced since sentencing is at the discretion of the trial court

d. That plea bargaining is an agreement of the State/ Republic and the accused person and the victim is only consulted and made to make representations before the agreement is made

e. That this Honourable court lacks jurisdiction to hear and determine this application since the sentence passed by the trial court is final and no appeal shall lie therefrom except as to the extent or legality of the sentence impose as provided for under section 137L of the Criminal Procedure Code.

4. The 1st Respondent prays the Applicant's application be dismissed in its entirety.

5. The 2nd Respondent did not participate in the application.

Directions on submissions

6. Directions were given for the application to be heard through written submissions. The Applicant's submissions are dated 30th June 2025 filed by Wollace Maina & Co. Advocates while the Respondent's submissions are dated 14th July 2025 filed by Ms. Agatha Abang for the ODPP.

Applicant's Submissions

7. The Applicant while relying on the East African Court of Appeal decision in Wanjema v Republic (1771) EA 493, and Nakuru High Court in Barmoti Simpano v Republic (2023) eKLR submitted that the Appellant was charged with the offence of robbery which is a capital offence, it carries with it a grave consequence with a mandatory death penalty, reflecting its seriousness, due to the use of violence or threats and the potential significant harm to the victims as was in the instant case.

8. The Applicant submitted that his right to participate in the criminal justice process, as guaranteed under Article 50(9) of the Kenyan Constitution and Section 9 o f the *Victim Protection Act*, was violated. The Prosecution failed to adequately consult the Applicant or consider his impact statement before agreeing to the plea bargain and which the Applicant vehemently opposed.

   That the Applicant wrote to the office of the Assistant Director of Public Prosecutions who in turn wrote to the Senior Prosecution Counsel in Kithimani asking her to consider the Applicant's prayers and grievances.

9. The Applicant cited the case of Ahamad Abolfathi Mohammed & Another v Republic (2018) eKLR on the discretion of the trial court in sentencing. He also cited R v Solomon (2005) NSWCCA 158, which held that the impact on victims of armed robbery is presumed to be substantial and any long-lasting effects constitute an aggravating factor in sentencing.

10. The Applicant submitted that his right to have his views considered in plea bargain is further supported by San Mateo County Guidelines (California), which emphasize that victims must be given an opportunity to provide input on the impact of the crime before a plea agreement is finalized. That in the present case the court acted on wrong principles of plea bargain and ignored significant material factors and therefore arrived at a sentence that was manifestly lenient and contrary to sentencing principles.

11. The Applicant submitted that plea bargains must balance efficiency with the public interest and the seriousness of the offence. Reliance was placed on R v Goodyear (2005) EWCA Crim 888, where the

court held that plea agreements must not result in sentences that are unduly lenient or fail to reflect the gravity of the offence, as this undermines public confidence in the justice system.

12. The Applicant further submitted that the trial court failed to exercise its discretion judiciously by accepting a plea bargain that resulted in a sentence disproportionate to the offence's severity. The Applicant relied on the case of S v Barnard 2004 (1) SACR 191 (SCA) where it was observed that:-

> " ...that interference with the sentencing discretion of a trial court by an appellate court can be allowed where the trial court did not exercise its discretion at all or exercised it improperly or unreasonably"

13. In Barmoti Simpano (supra) the court reviewed a 10-year sentence for robbery with violence, finding it too lenient given the use of weapons and assault on the victim. The court emphasised that sentences must reflect the statutory intent of deterrence and protection of victims. Further reliance was placed on R v Taylor (2005) NSWCCA 442.

14. The Applicant referred to the Philippine's jurisdiction where courts have emphasised the need for sentences being proportionate to the offence's severity. In People v De Jesus (Phillipines. 2020), the court clarified that robbery with violence or homicide requires sentences that reflect the original criminal intent and harm caused, rejecting lenient outcomes that fail to address the gravity of the offence. In the Attorney General's Reference No.4 of 1989 (UK), Court of Appeal increased a lenient sentence for robbery, holding that the public interest and victim impact must guide sentencing decisions, even in plea bargain cases.

15. The Applicant therefore asserts that the trial court manifestly and improperly exercised judicial discretion and therefore this court is respectfully invited to exercise its powers to both disturb and interfere with that impugned sentence.

1st Respondent's Submissions

16. The Respondent submitted that the Applicant has not demonstrated to this court sufficient convincing reasons to warrant the Applicant prosecute the instant Application.

17. The Applicant is the complainant in the matter and thus made his formal complaint to the police who in turn after investigations were complete availed the file to the Office of the Director of Public Prosecutions for purposes of carrying out the prosecutions in the matter.The decision to charge was made and the matter was registered in Kithimani in Criminal Case No. E00I of 2022.

18. Reference was made to Article 157(6) of *the Constitution* of Kenya places the state powers of prosecution on the office of the Director of Public Prosecutions. It states that:

> " The Director of Public Prosecutions shall exercise State powers of prosecution and may—
>
> a. institute and undertake criminal proceedings against any person before any court (other than a court martial) in respect of any offence alleged to have been committed;
>
> b. take over and continue any criminal proceedings commenced in any court (other than a court martial) that have been instituted or undertaken by another person or authority, with the permission of the person or authority; and
>
> c. subject to clause (7) and (8), discontinue at any stage before judgment is delivered any criminal proceedings instituted by the Director of Public

Prosecutions or taken over by the Director of Public Prosecutions under paragraph (b). "

19. The Respondent submitted that the Respondent's state powers as enshrined in *the Constitution* cannot be interfered with. By virtue of this provision under *the Constitution*, the Director of Public Prosecution is the one mandated to carry out prosecution of criminal cases on behalf of the state and victims therein.

20. Further Article 157(10) of *the Constitution* provides that the Director of Public Prosecutions shall not require the consent of anyone while commencing and directing criminal proceedings. It provides that:

> " The Director of Public Prosecutions shall not require the consent of any person or authority for commencement of criminal proceedings and in the exercise of his or her powers or functions, shall not be under the direction or control of any person or authority".

21. It was submitted that the Respondent is an independent office that cannot be directed by any authority or person in exercising their duties to commence or discontinue criminal proceedings against any person.

22. In this case, the Respondent shall not be directed as well in undertaking Plea Bargaining proceedings, which fall under criminal proceedings, in any criminal matter as provided for in Section 137B of the Criminal Procedure Code. It provides that:

> " A plea agreement on behalf of the Republic shall be entered into by the Directo of Public Prosecutions or officers authorized by the Director of Public Prosecutions in accordance with article 157(9) of *the Constitution* and any Other person authorized by any written law to prosecute:
>
> Provided that in any trial before a subordinate court, a public prosecutor may with the prior written approval of the Director of Public pro prosecutions or officers subordinate to him, as the case may be, enter into a plea agreement in accordance with section 137A(1)"

23. The Respondent submitted that the Applicant herein s the complainant in the instant case that he seeks to review. That case is criminal in nature and it's *the Constitution* mandate of the DPP to commence and prosecute all criminal matters. The Applicant has no locus standi in law to prosecute this application.

24. Reliance was placed in Waswa v Republic [2020] KESC 23 (KLR) the Supreme court held in respect to the mandate of the DPP as per *the constitution*:

> " At this point, we feel compelled to make a few observations on the powers of the DPP. article 1571) of *the Constitution* establishes the office of DPP. The State 's prosecutorial powers are vested in the DPP under article 157 of *the Constitution*. That office, under Sub-article 10, neither requires the consent of any person to institute criminal proceedings nor is it under the direction or control of any person or authority. These provisions are also replicated in Section 6 of the *Office of the Director of Public Prosecutions Act*, 2013. This office is the sole constitutional office with the powers to conduct criminal prosecutions. In interpreting how the DPP exercises his powers, Lenaola J (as he then was) in Republic V Director of Public Prosecutions exparte Meridian Medical Centre Ltd 7 Others Petition No. 363 of2013 expressed himself as follows: "I also agree with the submission of Mr Kilukumi that the decision to prosecute is a quasi-judicial decision which should not be taken lightly given the penal

Consequences inherent in any criminal proceeding ... There is also no doubt that the Office of the DPP should exercise its mandate and discretionary power to Prosecute within constitutional limits and the independence of his office.”

25. The Respondent agrees with this view and adopts it as the correct position in law. It is the Respondent's view that the victim has no active role in the decision to prosecute, or the determination of the charge upon which the accused will finally be tried. This is the sole duty of the DPP. While the victim of a crime can participate at any stage of the proceedings as deemed appropriate by the trial Judge, a victim or his legal representative does not have the mandate to prosecute crimes on behalf of the DPP. The DPP must at all times retain control of, and supervision over the Prosecution of the case. As such, the Constitutional and Statutory powers of the DPP to conduct the prosecution is not affected by the intervention of the victim in the process.

26. Additionally, a victim cannot and does not wear the hat of a secondary prosecutor. When victims present their views and concerns in accord with section 9(2) (a) of the VPA victims are assisting the trial Judge to obtain a clear picture of what happened (to them) and how they suffered, which the Judge may decide to take into account. Victim participation should meaningfully contribute to the justice process. It must be noted, however, that this does not mean that the court 's judgment will follow the wishes of the victim. The trial Judge will, of course, take into account the law, facts, all the different interests, and concerns, including the rights of the defence and the interests of a fair trial to arrive at a sagacious decision. "

27. It was further submitted that the act of appeal of any decision is an act of prosecuting' and thus that right solely remains with the DPP. The victim/complainant is limited to.

28. The Supreme Court went further to highlight the guiding principles of a victim/complainant to take part in a trial. The Supreme Court inter alia states that;

> “ The victim •s presentation should be strictly limited to " he views and concerns ' ’of the victim in the matter granted participation
>
> The trial court should ensure that the victim or the victim 's legal representative understands that prosecutorial duties remain solely with the DPP "

29. The law does recognise the victim/complainant does have rights o participate in criminal proceedings, but it is limited to the actual trial in court. Any decisions of charging' directing, ceasing or withdrawing, appealing or in this plea gaining remain the reserve of the DPP as envisaged in *the Constitution* Article 157.

30. Reference was made to Section 137A - O of the Criminal Procedure Code makes provision for Plea Agreements. As is provided for in Section 137A, a plea agreement is an agreement between the Prosecution and the Accused person. It provides that:

> “ Subject to section 137B, a prosecutor and an accused person or his representative may negotiate and enter into an agreement in respect of-
>
> (a) reduction of a charge to a lesser included offence
>
> (b) Withdrawal of the charge or a stay of other charges or the promise not to proceed with other possible charges. '

31. Section 137D makes provision for consultations with the victim. It provides that:

> " A prosecutor shall only enter into a plea agreement in accordance with section
>
> 1
>
> —
>
> (a) after consultation with the police Officer investigating the case;
>
> (b) with due regard to the nature of and the circumstances relating to the offence the personal circumstances of the accused person and the interests of the community;
>
> (c) unless the circumstances do not permit, after affording the victim or his legal representative the opportunity to make representations to the prosecutor regarding the contents of the agreement. "

32. The law provides that the victim and complainant should be consulted during the plea agreement negotiations in a bid to inform them of what is transpiring as between the parties i.e the State and the accused. The law does not mention that if the complainant/victim is not agreeable to the terms of the plea agreement that negotiations cease to continue. The complainant/victim is to be informed and be aware of the plea negotiations and they are given chance to express their views on the directly to the court or through a representative or through a victim impact statement. The court has the discretion to make the final determination into the matter.

33. It was submitted that the victim is to be consulted in the process and proceedings of the Plea-bargaining process and their views are to be taken into consideration. However, the final decision into the plea-bargaining processes and agreement lies with the prosecutor and the Accused person as provided for in the law.

34. That, the advocate Gatundu watching brief for the complainant came on record on 27/4/2023. On 15/1/2024 the court made orders for a victim impact assessment report to be availed to the court. On 15/4/2024 the trial court was informed by the counsel watching brief that the complainant was not amenable to the plea agreement. On 2/9/2024 counsel watching brief for the complainant further informed the trial court that they had consulted the ODPP as regarding the sentence which they had an issue with. On 12/9/2024 counsel watching brief for the complainant made substantive remarks and submissions to the trial court as regarding the plea bargaining.

35. It was submitted that from the record, the complainant was fully aware of the plea-bargaining negotiations as between the state and the accused person in the matter. They were fully consulted and their views were expressed to the court directly through their legal representative and the victim impact statement. Thus, the law was properly followed as per Section 137D of the Criminal Procedure Code.

36. Section 137L of the Criminal Procedure Code, further provides for the finality of the judgment issued in a plea-bargaining case. It states that:

> " (l) Subject to subsection (2), the sentence passed by a court under this Part shall be final and no appeal shall lie therefrom except as to the extent or legality of the sentence imposed.
>
> (2) Notwithstanding subsection (1), the Director of Public Prosecutions, in the public interest and the orderly administration of justice, or the accused person, may apply to the court which passed the sentence to have the conviction and

sentence procured pursuant to a plea agreement set aside on the grounds of fraud or misrepresentation.

(3) J17tere a conviction or sentence has been set aside, under subsection (2), the provisions of section 13J shall apply mutatis mutandis. "

37. That the trial court entered the plea agreement as part of the court record and issued a sentence in the matter. Thus, the sentence is final and no appeal can be lodged on the same except to the legality of the sentence. We submit that the sentence was as a result of the plea negotiations between eh state and the accused. The trial court considered all the provisions of Section 137F of the Criminal procedure Code in arriving at its decision and thus used its discretion to sentence the accused person as such. The Respondent urged this honourable court not to interfere with the trial courts orders and sentence issued.

38. That the Applicant seeks this honourable court to exercise revisionary powers under section 362 and 364 of the Criminal Procedure Code to call and examine the record with the view to pronounce itself as to correctness, legality and propriety of the proceeding and orders issues and further seeks to have this honourable court revise, vary and/or set aside the orders and judgment issued by the trial Court.

39. On perusing the record of Criminal case E00I of 2022, the Respondent submitted that the trial Court exercised its discretion in making the orders in the matter and that the trial court conducted itself if a proper and legal manner.

40. That the law does not allow a party who is entitled to challenge the order on conviction or sentence on appeal to personally approach the Court for revision or sentence review. In the case Koech v Republic [2024] KEHC 5055 (KLR) the learned judge in quoting Martin Mavuti Kituyi v Republic HCCR Revision No. 2 7 of 2013 the court rendered itself as follows:

> " ...the very nature of revision as a discretionary remedy explains the policy underpinnings of Section 364(5) of the Criminal Procedure Code; that revision should not be a substitute for an appeal whatsoever or insisted upon by a party who has not filed an Appeal where one was provided for. Revision primarily serves to put right instances where a finding, sentence, order or proceedings of a lower court are tainted by incorrectness, impropriety, illegality or irregularity.

41. The law guides the revisionary power of the high Court is provided for under section 362 of the Criminal Procedure Code which states as follows: 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 such to the regularity of any proceedings of any such subordinate court .

42. Trial Court acted within the law and none of the findings, sentence and orders incorrect, improper, illegal or irregular. The Respondent invited this Honourable Court lower court record and find the same.

43. In Douglas Maina Mwangi vs Kenya Revenue Authority and Another High court Constitutional Petition No. 528 of 2013 D.S Majanja J held that:

> " 1 do not find any reason or ground to intervene in that decision nor is it the obligation of the court to supervise the minutiae of investigation and prosecution "

44. In the absence of any evidence of bad faith, abuse of process of the court, illegality, fraud or misrepresentation, we submit that judicial intervention should be limited to acts that are decision-make! reached a wrong decision Influenced by other considerations other than the law, evidence, and the duty to serve the interests of justice.

Mativo J in High Court J.R Application No. 621 of 2017 R vs Inspector General, Director of public Prosecutions & 3 Others stated that:-

> " The power to stay or prohibit criminal proceedings is meant to advance the Rule of Law and not to frustrate it. The Constitutional provision in Article 157 (10) of *the Constitution* ensures that the DPP had complete independence in his decision-making process, which is vital to protect the integrity of the criminal justice system because it guarantees that any decision to prosecute a person is made free of any external influences.... "

45. In conclusion the Respondent submitted that the orders sought by the Applicant are not available to him as he has no locus standi before this court to prosecute this application. Further the Applicant is barred from seeking revocation of the trial court's orders by virtue of Section 137L of the Criminal Procedure Code as the same is final in the matter.

46. The Respondent invited the court to be shy in accepting invitations by litigants to interfere with the independent exercise of constitutional and statutory authority by state organs except in those cases where such organs and offices are acting ultra vires, outside the confines of reasonableness, procedural fairness, malafides and in total disregard of the doctrine of proportionality in decision making.

Analysis and Determination

47. I have carefully perused and considered the trial court's record, the application herein, the Grounds of Opposition thereto and submissions filed by Parties. The issue for my determination is whether the Applicant's application dated 5th November 2024 seeking to revise, vary or set aside a plea bargain judgment is merited.

48. Article 157(6) of *the Constitution* of Kenya places the state powers of prosecution on the office of the Director of Public Prosecutions. It states that:

> " The Director of Public Prosecutions shall exercise State powers of prosecution and may—
>
> d. institute and undertake criminal proceedings against any person before any court (other than a court martial) in respect of any offence alleged to have been committed;
>
> e. take over and continue any criminal proceedings commenced in any court (other than a court martial) that have been instituted or undertaken by another person or authority, with the permission of the person or authority; and
>
> f. subject to clause (7) and (8), discontinue at any stage before judgment is delivered any criminal proceedings instituted by the Director of Public Prosecutions or taken over by the Director of Public Prosecutions under paragraph (b). "

49. Section 137A is on a plea agreement is an agreement between the Prosecution and the Accused person. It provides that:

> " Subject to section 137B, a prosecutor and an accused person or his representative may negotiate and enter into an agreement in respect of-(a)reduction of a charge to a lesser included offence (b) Withdrawal of the charge or a stay of other charges or the promise not to proceed with other possible charges."

50. Section 137B of the Criminal Procedure Code provides that:

> " A plea agreement on behalf of the Republic shall be entered into by the Director of Public Prosecutions or officers authorized by the Director of Public Prosecutions in accordance with article 157(9) of *the Constitution* and any Other person authorized by any written law to prosecute:
>
> Provided that in any trial before a subordinate court, a public prosecutor may with the prior written approval of the Director of Public pro prosecutions or officers subordinate to him, as the case may be, enter into a plea agreement in accordance with section 137A(1)"

51. Section 137L of the Criminal Procedure Code, further provides for the finality of the judgment issued in a plea-bargaining case. It states that:

> " (l)Subject to subsection (2), the sentence passed by a court under this Part shall be final and no appeal shall lie therefrom except as to the extent or legality of the sentence imposed.
>
> (2) Notwithstanding subsection (1), the Director of Public Prosecutions, in the public interest and the orderly administration of justice, or the accused person, may apply to the court which passed the sentence to have the conviction and sentence procured pursuant to a plea agreement set aside on the grounds of fraud or misrepresentation.
>
> (3) Whtere a conviction or sentence has been set aside, under subsection (2), the provisions of section 13J shall apply mutatis mutandis. "

52. Additionally, a victim cannot and does not wear the hat of a secondary prosecutor. When victims present their views and concerns in accord with section 9(2) (a) of the VPA victims are assisting the trial Judge to obtain a clear picture of what happened (to them) and how they suffered, which the Judge may decide to take into account. Victim participation should meaningfully contribute to the justice process. It must be noted, however, that this does not mean that the court 's judgment will follow the wishes of the victim. The trial Judge will, of course, take into account the law, facts, all the different interests, and concerns, including the rights of the defence and the interests of a fair trial to arrive at a sagacious decision. "

53. The law does recognise the victim/complainant does have rights o participate in criminal proceedings, but it is limited to the actual trial in court. Any decisions of charging' directing, ceasing or withdrawing, appealing or in this plea gaining remain the reserve of the DPP as envisaged in *the Constitution* Article 157.

54. The Applicant herein is the complainant in the instant case that he seeks to review. The case is criminal in nature and it's the Constitutional mandate of the DPP to commence and prosecute all criminal

matters. I agree that the Applicant has no locus standi in law to prosecute this application. See Supreme Court of Kenya decision in Waswa v Republic [2020] KESC 23 (KLR).

55. The act of appeal of any decision is an act of prosecuting' and thus that right solely remains with the DPP. The role of the victim/complainant is limited.

56. The Supreme Court in the Waswa case (supra) went further to highlight the guiding principles of a victim/complainant to take part in a trial. the supreme court inter alia states that;

> " The victim •s presentation should be strictly limited to " he views and concerns ' of the victim in the matter granted participation
>
> The trial court should ensure that the victim or the victim 's legal representative understands that prosecutorial duties remain solely with the DPP "

57. The Applicant's application essentially seeks the exercise of this court's discretion in sentencing. This court can only interfere with the exercise of sentencing discretion by the trial court if it determines that that discretion was wrongly exercised. The Court of Appeal in Ahmad Abolfathi Mohammed & Another –vs- Republic Criminal Appeal No. 135 of 2016 (unreported) held at Page 25 thus:

> " As what is challenged in this appeal regarding sentence is essentially the exercise of discretion, as a principle this Court will normally not interfere with exercise of discretion by the court appealed from unless it is demonstrated that the court acted on wrong principle; ignored material factors; took into account irrelevant considerations; or on the whole that the sentence is manifestly excessive. In Bernard Kimani Gacheru v. Republic, Cr App No.188 of 2000 this Court stated thus:
>
> "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, any one of the matters already stated is shown to exist."

58. This court cannot interfere with a sentence arrived at as a result of a plea bargain agreement and no grounds are laid that will entitle the court to set aside a legally binding agreement.

59. The law does not allow a party who is entitled to challenge the order on conviction or sentence on appeal to personally approach the Court for revision or sentence review. In the case Koech v Republic [2024] KEHC 5055 (KLR) the learned judge in quoting Martin Mavuti Kituyi v Republic HCCR Revision No. 2 7 of 2013 the court rendered itself as follows:

> " ...the very nature of revision as a discretionary remedy explains the policy underpinnings of Section 364(5) of the Criminal Procedure Code; that revision should not be a substitute for an appeal whatsoever or insisted upon by a party who has not filed an Appeal where one was provided for. Revision primarily serves to put right instances where a finding, sentence, order or proceedings of a lower court are tainted by incorrectness, impropriety, illegality or irregularity.

60. The law that guides the revisionary power of the high Court is provided for under section 362 of the Criminal Procedure Code which states as follows: 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 such to the regularity of any proceedings of any such subordinate court .

61. As already stated, I have examined the trial court's proceedings and I note that Mr. Gatundu, Advocate watching brief for the complainant came on record on 27/4/2023. On 15/1/2024 the court made orders for a victim impact assessment report to be availed to the court. On 15/4/2024 the trial court was informed by the counsel watching brief that the complainant was not amenable to the plea agreement. On 2/9/2024 counsel watching brief for the complainant further informed the trial court that they had consulted the ODPP as regarding the sentence which they had an issue with. On 12/9/2024 counsel watching brief for the complainant made substantive remarks and submissions to the trial court as regarding the plea bargaining and the trial court made a ruling on the same.

61. On the foregoing, it is clear that the complainant was fully aware of the plea-bargain negotiations as between the State and the accused person in the matter. They were fully consulted and their views were expressed to the court directly through their legal representative and the victim impact statement. Thus, the law was properly followed as per Section 137D of the Criminal Procedure Code.

61. It is my considered view that the Trial Court acted within the law and none of the findings, sentence and orders were incorrect, improper, illegal or irregular.

61. In his submissions, the Applicant failed to demonstrate that the San Mateo County Guidelines (California), the Philippine and UK laws on plea bargain are similar to or applicable to our Kenyan law on the same.

61. In the end I find that the Applicant's application dated 5th November 2024 lacks merit and the same is dismissed.

Orders accordingly.

This Miscellaneous file is closed.

RULING WRITTEN, DATED & SIGNED AT MACHAKOS THIS 4TH NOVEMBER 2025

NOEL I. ADAGI

JUDGE

DELIVERED VIRTUALLY ON TEAMS AT MACHAKOS THIS 4TH NOVEMBER 2025

In the presence of:

Mr. Wallace Maina for Applicant

Ms. Agatha Abang for State

Milly-Court Assistant