



**Nyabuto v Republic (Criminal Revision E011 of 2024)
[2024] KEHC 11550 (KLR) (30 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 11550 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CRIMINAL REVISION E011 OF 2024
FR OLEL, J
SEPTEMBER 30, 2024**

BETWEEN

BONFACE NYABUTO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

A. Introduction

1. The applicant was charged with the offence of obtaining money by false pretences contrary to section 313 of the *penal code*, resisting arrest by a police officer in due execution of duty contrary to section 103(a) of the *National police service Act* and on count three was charged with the offence of Assault causing actual bodily harm contrary to section 251 of the *penal code*. The applicant was convicted on his own plea of guilty and sentenced to pay a fine of Kshs.20,000/= or in default to serve six (6) months in default on count one, on count two he was fined Kshs.100,000/= or in default to serve two years imprisonment and on count three he was fined Kshs.50,000/= and in default to serve one (1) year imprisonment. The sentences were to run consecutively.
2. Through this application, the applicant seeks that the court be pleased to review the fine and sentence imposed, taking into account that he was a casual labourer, and the current prevailing economic environment which made it difficult for him to raise the hefty fines imposed. The respondent’s counsel opposed this application and did submit that based on the evidence adduced before the trial court, the conviction and sentence of the applicant, was proper and lawful thus and there was no need to interfere with the same.



C. Analysis of Law

3. I have considered the application by the applicant as well as the response by the state counsel/ODPP. The powers of the High court in revision are contained in Section 362 through to 366 of the *Criminal Procedure Code* (cap.75). Section 362 specifically provides 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 to the regularity of any proceedings of any such subordinate court”.

4. What the High Court can do under its revision jurisdiction is stated under Section 364 of the *Criminal Procedure Code*(Cap 75), which states 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 section 354, 357 and 358, and may enhance sentence;.

(b) in the case of any other order 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 had had an opportunity of being heard either personally or through 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 arises from a finding, sentence or order and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.”

5. It has not been demonstrated that the trial magistrate committed any illegality, impropriety or mistake in convicting and sentencing the applicant. The sentences imposed by the trial court were within the law and by any standard, lenient even considering that the applicant was a first offender.

6. This court hands are also tied by section 364(5) of the criminal procedure code, cited above which calls on the applicant to file an appeal as against sentence if dissatisfied.

7. I find that this application is not merited given the serious nature of the offences the applicant was charged with vis-a-vis the sentence imposed.



8. The application is declined and is dismissed.

9. It is hereby so ordered.

RULING WRITTEN, DATED AND SIGNED AT MACHAKOS THIS 30TH DAY OF SEPTEMBER 2024.

FRANCIS RAYOLA OLEL

JUDGE

Delivered on the virtual platform, Team this 30th day of September, 2024.

In the presence of: -

Applicant from Kitengela prison

Mr. Mongare for Respondent

Susan/Sam Court Assistant

