



REPUBLIC OF KENYA



**KENYA LAW**  
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**Akumu v Republic (Criminal Revision E012 of 2023)  
[2023] KEHC 3014 (KLR) (31 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 3014 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIVASHA  
CRIMINAL REVISION E012 OF 2023  
GL NZIOKA, J  
MARCH 31, 2023**

**BETWEEN**

**THOMAS MATWETWE AKUMU ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Emanating from Chief Magistrate's Court at Naivasha Criminal Case No E1634 of 2022)*

**RULING**

1. The applicant was arraigned before the Chief Magistrate's Court at Naivasha charged *vide* Criminal Case No E1634 of 2022, with the offence of engaging in unlicensed fishing activity contrary to section 124 (1) (c) (3) as read with section 186 (1) of the *Fisberies Management and Development Act* 2016 in count 1, using prohibited fishing gear for fishing contrary to section 42 (1) (e) (7) as read with section 186 (1) of the *Fisberies Management and Development Act*, 2016 in count 2, contravening fisheries management measure contrary to section 40 (1) (b) (2) of the *Fisberies Management and Development Act* 2016 in count 3 possession of fish contrary to section 56 (1) (2) of the *Fisberies Management and Development Act* in count 4. The particulars of each charge are as per the charge sheet.
2. He pleaded guilty to all the charges, was convicted and sentenced to pay a fine of Kshs 5,000.00 on each count and in default to serve (3) months imprisonment each. The sentence is to run consecutively.
3. By an application filed on January 31, 2023 the applicant prays that the sentence be reduced and/or converted into a non-custodial sentence. The application is supported by his affidavit, and a document labelled "memorandum of revision." He avers that he pleaded guilty and is a first offender. That he has learnt to be a law abiding citizen. Further he has a young family that requires him to cater for their needs. That he has no pending appeal and is only applying for review of his sentence.
4. The respondent did not respond to the application despite being granted an opportunity to do so, as such the application is unopposed.



5. The Probation Department filed a report dated; March 15, 2023 which indicates that the applicant's parents are farmers and hail from Kisii County and own a piece of land with permanent dwelling houses.
6. That he is 36 years and the 1<sup>st</sup> born out of four (4) siblings. He was married but separated from his wife in 2016 and does not have dependants. Further he dropped out of school in form 3 due to financial constraints but managed to join a college and obtained a certificate in catering.
7. Furthermore, he worked as a chef in a hotel in Karagita area but was laid off due to harsh economic conditions which forced him to join illegal fishing that led to his arrest.
8. The applicant prays for leniency and asks the court to consider the period he spent in remand and so far eight (8) months in prison. That he is willing to complete his sentence outside.
9. The report indicates that, his family members are willing to receive him and help him settle and that his mother visits him regularly in prison. That the local administration states that he has no record of crime and is not a threat to the community. Further the victim, being the Kenya Coast Guard Naivasha do not object to the applicant being released on non-custodial measures.
10. He is said to be working at the SSP section in Prison performing cleaning duties and has a good record of discipline. The Probation report indicates his earliest possible date of release is 7<sup>th</sup> July 2023. That as he has a permanent place of abode at Karagita area, his supervision shall be easy since he can commute. The report recommends he be released on Community Service Order under supervision for the remaining three (3) months of his sentence.
11. The applicant seeks for revision hence the provisions of sections 362 of the *Criminal Procedure Code* (herein "the code"), which provided for the revisionary power of the High Court comes into play and 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 to the regularity of any proceedings of any such subordinate court.”

12. However, the section should be read together with section 364 of the *Code* which provision states as follow: -
  - (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 sections 354, 357 and 358, and may enhance the sentence;
    - (b) in the case of any other order other 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 has had an opportunity of being heard either personally or by 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 lies from a finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed.”
13. It is therefore clear from the above provisions that, the court will only exercise its revisionary powers where, the impugned sentence is either incorrect, illegal or improper. Thus the objective of revisionary jurisdiction is to set right a patent defect or error of jurisdiction or law. This jurisdiction will only be invoked where the decision under challenge is; grossly onerous, there is no compliance with the provisions of the law, or the finding re-ordered are based on no evidence, or material evidence is ignored or judicial discretion is exercised arbitrarily or perversely.
14. In the instant matter, the applicant was convicted of the offence under section 124 (1) of the [Fisheries Management and Development Act](#), 2016 that states: -
- (1) No person shall, except under the authority of and in accordance with a valid and applicable licence or authorization issued pursuant to this [Act](#)—
  - (c) use or permit a vessel to engage in fishing or a related activity of a kind or type, or at a time, or in a place or manner, for which a licence or authorization is required under this [Act](#).
  - (3) A person who contravenes subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand or to a term of imprisonment not exceeding five years or to both.
15. He was further convicted under, section 42 (1) (e) as read with section 42 (7) of the [Fisheries Management and Development Act](#), 2016 that states: -
- 1) No person shall use, permit to be used or attempt to use or carry on board a vessel—
    - (e) monofilament net for the purpose of fishing;
    - (7) A person who contravenes any of the provisions of this section commits an offence and shall be liable on conviction to a fine not exceeding five million shillings or to a term of imprisonment not exceeding three years or to both in respect of industrial fishing and to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding three months or to both in respect to artisanal fishing.
16. In count 3 he was convicted under section 40 (1) (b) as read with section 40 (2) of the [Fisheries Management and Development Act](#), 2016 which provides that: -
- (1) The Director-General may in accordance with the best scientific advice and such other relevant information as may be available, with the approval of the Cabinet Secretary, by notice in the Gazette, impose, *inter alia*, any of the following measures for the conservation and management of any fishery—
    - (b) prohibited fishing areas for all or designated species of fish or methods of fishing;



- (2) Any person who contravenes the provisions of a notice issued under this section commits an offence and is liable on conviction to a fine not exceeding five hundred thousand shillings or imprisonment for a term not exceeding one year or to both in respect of industrial fishing, and to a fine not exceeding twenty thousand shillings or imprisonment for a term not exceeding three months or to both in respect of artisanal fishing.
17. Finally, he was convicted under section 56 (1) and (2) of the *Fisberies Management and Development Act*, 2016 that states that: -
- (1) No person who has clear cause to believe that a fish, fish product or other fisheries resources have been obtained in contravention of this *Act* shall buy, sell, possess or otherwise trade in such fish, fish products, or other fisheries resources.
- (2) A person who contravenes subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings or to a term of imprisonment not exceeding three years or to both, and in addition all fish or fish products in respect of which the offence is committed shall be forfeited.
18. Pursuant to the aforesaid, the sentences meted out are lawful and legal. However, I have considered the pre-sentence report and find that, it is positive. Furthermore, the applicant has been in custody for a period of about four (4) months. He should have learnt a lesson and therefore I direct that, he be released to serve the remaining period of four (4) months on community service order at a place identified by the Probation department. A report of successful completion of sentence be filed in court at the end of the service. In case of breach of the community service order the remaining period be served in custody.
19. It is so ordered.

**DATED, DELIVERED AND SIGNED ON THIS 31<sup>ST</sup> DAY OF MARCH, 2023**

**GRACE L. NZIOKA**

**JUDGE**

**In the presence of:**

Appellant present in person, in court virtually

Mr Atika for the Respondent

Ms Ogutu: Court Assistant

