



REPUBLIC OF KENYA



**Mbugua v Republic (Criminal Revision E128 of 2022)
[2022] KEHC 14799 (KLR) (26 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 14799 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CRIMINAL REVISION E128 OF 2022
GL NZIOKA, J
OCTOBER 26, 2022**

BETWEEN

PATRICK MWANGI MBUGUA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged before the Senior Principal Magistrate’s Court at Engineer *vide* Criminal Case No E3713 of 2021, with the offence of; stock theft contrary to section 278 of the Penal Code. He was further charged with the offence of killing an animal with intent to steal the carcass contrary to section 289 of the *Penal Code*. The particulars of each charge are as per the charge sheet.
2. He pleaded guilty and convicted on his own plea of guilty and was sentenced two (2) years imprisonment on each counts and sentence ordered to run concurrently. However, he seeks for sentence review *vide* the notice of motion application filed in court on, August 30, 2022 and seeks for sentence review.
3. The applicant relies on a document entitled “memorandum of sentence review” in which he states that: -
 - a. That, I am not appealing against conviction and sentence but applying for a review of sentence, that the court may consider leniency, preferably a non-custodial sentence or community service.
 - b. That your lordship/ladyship the applicant herein is a first offender.
 - c. That the honourable court exercise its jurisdiction and review the sentence thereof that the applicant may finish the remaining sentence on community service.



4. On the September 29, 2022, the court ordered that a response and submissions, (if any) and a pre-sentence report, be filed. However, the respondent did not file any response, submissions nor is a probation report filed.
5. Be that as it were, the revisionary power of the High Court is provided for is under sections 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 to the regularity of any proceedings of any such subordinate court.”
6. Further the provisions of; section 364 of the [Criminal Procedure Code](#) 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.”
7. It is clear from the above provisions that, the court will only exercise its revisionary powers where, the impugned sentence is either incorrect, illegal or improper. The objective of revisionary jurisdiction is to set right a patent defect or error of jurisdiction or law. This jurisdiction will only be involved 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.
8. Further, in exercise of revision powers, it is not the responsibility of the High Court to take into account the benefit of the evidence, it merely has to see if the provisions of the law have been properly adhered to by the court whose order is the subject of the revision, as held in; Major [SS Khanna v Brig FJ Dillon](#) 1964 AIR 497, 1964 SCR (4) 409).



9. It is also noteworthy therefore that, the revision jurisdiction does not allow the court to interfere and correct errors of facts, or of law when the order is within the jurisdiction of the subordinate court; even if the order is right or wrong, or in accordance with the law, unless it exercised its jurisdiction illegally or with material irregularity. Reference is made to the cases of; *Wesley Kiptui Rutto & another v Republic* [2017] eKLR, *Republic v Everlyne Wamuyu Ngumo* (2016) eKLR, *Public Prosecutors v Muhavi Bi Mond Jani & another* 1996 4 LRC 728, 743-5, *DPP v Samuel Kimucbe*.
10. In the instant matter, the applicant is charged with the offence, under section 278 and 289 of the *Penal Code*, which sections states as follows: -
- 278 “If the thing stolen is any of the following things, that is to say, a horse, mare, gelding, ass, mule, camel, ostrich, bull, cow, ox, ram, ewe, wether, goat or pig, or the young thereof the offender is liable to imprisonment for a period not exceeding fourteen years.”
11. Similarly, section 289 of the *Penal Code* that provides as follows:
- 289 “Any person who kills any animal capable of being stolen with intent to steal the skin or carcass, or any part of the skin or carcass, is guilty of an offence and is liable to the same punishment as if he had stolen the animal.”
12. It is clear from the aforesaid that, the sentence provided for the offences herein is an imprisonment for a period not exceeding for fourteen (14) years for both offences. The sentence meted in the present case is two (2) years imprisonment and even ordered to run concurrently. The sentences are therefore within the limits provided for under the law. Therefore, the sentence is not illegal, incorrect or improper and therefore not subject to review
13. In fact, the sentence is extremely lenient and it’s rather surprising that the respondent did not even seek for enhancement of this lenient sentence. In the given circumstances the application for review is rejected and dismissed.
14. It is so ordered.

DATED, DELIVERED AND SIGNED ON THIS 26TH DAY OF OCTOBER, 2022

GRACE L NZIOKA

JUDGE

In the presence of: -

Applicant in person

Ms Maingi for the Respondent

Ms Ogutu: Court Assistant

