

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAMIRA

REVISION NO. 02 OF 2019

CYNTHIA NYAKUNDI.....APPELLANT

=VRS=

THE REPUBLIC.....RESPONDENT

(From original Conviction and Sentence of Hon. S. K. Arome – SRM in the Original Keroka Principal Magistrate’s Court Criminal Case No. 107 of 2019)

RULING

The applicant has sought a revision of the sentence imposed by the lower court for being harsh. She has sought to mitigate and stated that she pleaded guilty to the charge, that she is a first offender who should have been given a fine or non-custodial sentence. She also alleges that the charge sheet was defective.

This being an application for revision as opposed to an appeal my duty is confined to ascertaining the correctness, legality and propriety of the sentence and the regularity of the proceedings. I have done so and I am not persuaded that any of those circumstances exist. The sentence being harsh should be a ground for appeal not revision unless where the court is engaged in a prison decongestion exercise. **Section 364 (5) of the Criminal Procedure Code** is clear that this court cannot entertain a revision where the applicant could have appealed but did not. This application is therefore dismissed.

E. N. MAINA

JUDGE

ORDER

This ruling be certified to the lower court as well as the applicant.

E. N. MAINA – J

26/02/2019