



**Mugo v Republic (Criminal Revision E234 of 2024)
[2025] KEHC 2027 (KLR) (20 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2027 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
CRIMINAL REVISION E234 OF 2024
LN MUTENDE, J
FEBRUARY 20, 2025**

BETWEEN

BENSON KINYUA MUGO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Benson Kinyua Mugo, the Applicant, was arraigned in the Nyahururu Chief Magistrate’s Court Miscellaneous Criminal Application No. E035 of 2023 where No.(withheld) PC Muriuki Mureithi sought an order requiring him to be held in custody for 7 days to enable the police conclude investigations in a case of stealing by agent. The court granted the order sought on 29/5/2023, hence the Applicant approached this court seeking revision so that he could secure liberty.
2. The matter on being placed before Kariuki J was scheduled for mention on 19/6/2023. In the meantime, the matter came up for mention in the lower court on 12/6/2023, where the court was notified that investigations were concluded hence the Applicant was to answer charges in Criminal Case No. E873 of 2023. For that reason, the File was closed. That resulted into the learned counsel, Odhiambo Paul Xistus for the Applicant not appearing in court.
3. The Applicant approached the court pursuant to provisions of Section 362 and 364 of the Criminal Procedure Code (CPC). The stated stipulations of the law provide thus:

“(362) 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.

(364)



- (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—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;

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.”

4. Section 362 of the CPC primarily pertains to powers to review decisions of the lower court to ensure errors in law and the procedure are addressed. The court assesses the correctness, legality, and propriety of the findings or sentence passed so as to ensure justice is seen to be done. The resultant action of the court is to affirm, overturn the decision or give a remedy that may be reasonable.

5. Article 49(1)(g) of the Constitution provides thus:

“49. An arrested person has the right— (g) at the first court appearance, to be
(1) charged or informed of the reason for the detention continuing, or to be released; and....”

6. The investigating officer averred that a report had been booked in OB NO.33/20/5/2023 that prompted him to effect arrest. Investigations entailed transfer of the Applicant from Kirinyaga to Nyahururu and the Applicant was to assist in recovery of three motorbikes. Which means that the Applicant was informed of the reason he was being held which was pursuant to a court order.

7. Apparently, the lower court did not err in granting the order. It acted in accordance to the law. There having been no impropriety or illegality, it does not call for intervention of this court.

8. The upshot of the above is that the application fails and is accordingly dismissed.



9. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 20TH DAY OF FEBRUARY, 2025.

L.N. MUTENDE

JUDGE

