



**Adan v Republic (Miscellaneous Criminal Application
E043 of 2024) [2025] KEHC 2673 (KLR) (6 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 2673 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
MISCELLANEOUS CRIMINAL APPLICATION E043 OF 2024**

**JN ONYIEGO, J
MARCH 6, 2025**

BETWEEN

ISMAIL MOHAMED ADAN APPLICANT

AND

REPUBLIC RESPONDENT

*(Being a revision application against the sentence dated 13.11.24 delivered
by Hon. T. M. Mwangi-CM in Garissa MCCR Case No. E532/2024)*

RULING

1. The applicant was charged with the offence of stealing contrary to Section 268(1) as read with 275 of the *Penal Code*. Particulars were that on the 6th day of October 2024 at around 1130hours at Kuruso area, Madogo location in Bangale Sub-county within Tana River County, he stole Kshs.30,000/= and three mats valued at Kshs.3000/= the property of Marian kusow Dahir. Having pleaded guilty, he was convicted and sentenced to 4 ½ years.
2. Aggrieved by what he referred to as excessive sentence, he moved to this Court vide a chamber summons dated 16/12/24 supported by an affidavit purported to be sworn on the same date seeking revision of the said sentence. He averred that, being a first offender, the sentence was harsh. That he is a family man with three children and parents who depend on him as the sole breadwinner. That he has learnt from his mistakes and therefore fully reformed.
3. During the hearing, he reiterated the content in his affidavit. In response, the State conceded that the sentence imposed was excessive and beyond the legally provided for sentence.
4. I have considered the application herein and the response thereof. This Court's revisionary powers have been summoned courtesy of Article 165 (6) and (7) of *the constitution* which provides that;



Article 165 (6)-

“The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.”

Article 165 (7)-

“For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.”

5. The above provision is further amplified by Sections 362 and 364 of the [CPC](#).

Section 362 provides; Power of High Court to call for records-

“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.”

Section 364 thus state; Powers of High Court on revision-

“(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.”



6. From the record, the applicant was charged with stealing which attracts a maximum penalty of 3 years. Therefore, it is apparent that the trial Court's sentence of 4 ½ years is illegal hence calls for this Court's intervention.
7. It is trite that, sentencing is at the discretion of the trial Court and an appellate court would only interfere if the sentence is manifestly excessive, illegal or arrived at after considering wrong legal principles or irrelevant factors.

See the case of *Bernard Kimani Gacheru vs Republic* [2002] eKLR where the Court of Appeal stated thus:

“It is now settled law, following several authorities by this Court and the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, sentence must depend on the facts of each case. On appeal, the Appellant court will not easily interfere with the sentence unless the sentence is manifestly excessive in the circumstance of the case or that the trial court overlooked some material facts or took into account some wrong material or acted on the wrong principle even if the Appellate Court feels that the sentence is heavy and that the Appellate court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentences unless anyone of the matters already stated is shown to exist.”

8. In the circumstances and further, considering that the state is not opposed to the application, the sentence imposed by the trial Court is set aside for being illegal.
9. Taking into account his mitigation generally, having pleaded guilty thus saving court's precious time and being a first offender, I would find 18 months' sentence in prison appropriate to substitute the 4 ½ years sentence imposed by the trial court. The same shall start running from the date of sentence.

ROA 14 days.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 6TH DAY OF MARCH, 2025.

J. N. ONYIEGO

JUDGE

