



REPUBLIC OF KENYA



**KENYA LAW**  
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**Bosire v Republic (Criminal Revision E112 of 2024)  
[2025] KEHC 2642 (KLR) (6 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 2642 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAMIRA  
CRIMINAL REVISION E112 OF 2024**

**WA OKWANY, J**

**MARCH 6, 2025**

**BETWEEN**

**HELLEN BONARERI BOSIRE ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(From the original Conviction and Sentence in the Chief  
Magistrates' Court at Keroka, MCCR No. E562 of 2024)*

**RULING**

1. The Appellant was convicted for the following offences: -
  - i. Preparing, Cooking and Selling food under unsanitary conditions contrary to Section 7 as read with Section 36 (1) (a) of the [Food Hygiene Regulations](#) under the [Food Drugs and Chemical Substances Act](#) Cap.254 Laws of Kenya;
  - ii. Preparing, Cooking and Selling food without a valid medical certificate and contrary to Regulation 15 (1) (b) of the [Food Hygiene Regulations](#) under the [Food Drugs and Chemical Substances Act](#) Cap.254 Laws of Kenya; and
  - iii. Working in direct contact with food without a clean outer protective garment contrary to the 2<sup>nd</sup> Schedule, Part B, Regulation 15 (1) (c) of the [Food Hygiene Regulations](#) under the [Food Drugs and Chemical Substances Act](#) Cap.254 Laws of Kenya.
2. The trial court sentenced her to pay a fine of Kshs. 100,000/= or in default, to serve 12 months' imprisonment in the first count, to pay a fine of Kshs. 2,000 or in default, to serve 30 days' imprisonment in the second count and to pay a fine of Kshs. 2,000 or in default, to serve 30 months' imprisonment in the third count



3. She has now moved this Court through a Notice of Motion seeking a revision of her sentence and consideration for a probation order on the grounds that she was a first offender and is remorseful for her actions. The Application was supported by her affidavit in which she reiterated the grounds listed on the face of the application.
4. The Prosecution Counsel, Mr. Chirchir, did not oppose the Application and submitted that the Court could exercise its powers under Section 362 of the Criminal Procedure Code to revise the sentence.
5. Article 50 of the Constitution provides for the rights of an accused person as follows: -
  - (2) Every accused person has the right to a fair trial, which includes the right-
    - (q) if convicted, to appeal to, or to apply for review by a higher court as prescribed by law.
6. Article 165 of the Constitution grants the High Court supervisory powers over the subordinate courts as follows: -
 

Article 165

  1. 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.
7. This Court’s revisionary jurisdiction is encapsulated under the Criminal Procedure Code which outlines the manner in which such powers are to be exercised. The relevant provisions state: -
  - S. Power of the High Court to Call for Records
    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.”
  - S. Powers of the High Court on Revision
    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 -
        - (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 defense:
 

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 that 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 a 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.
8. It is therefore the duty of this Court, in an application for sentence review, to call for the records of the subordinate courts and satisfy itself as to the correctness, appropriateness and legality of those decisions.
9. I am minded that sentencing is at the discretion of the trial court which discretion an appellate court may not easily interfere with except where the sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor or took into account some wrong material, or acted on a wrong principle. In *Bernard Kimani Gacheru vs. Republic* [2002] eKLR the Court of Appeal held thus: -
- “It is now settled law, following several authorities by this court and by 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 appellate court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor or took into account some wrong material, or acted on a 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 sentence unless, anyone of the matters already stated is shown to exist.”
10. Similarly, in *R. vs. Mohamedali Jamal* (1948) 15 EACA, 126, the Eastern Africa Court of Appeal stated thus: -
- “It is well established that an appellate Court should not interfere with the discretion exercised by a trial Judge or Magistrate except in such cases where it appears that in assessing sentence, the judge has acted upon some wrong principle or has imposed a sentence which is either patently inadequate or manifestly excessive.”
11. I have considered the nature of the offences that the Applicant faced before the trial court and the attendant punishment provided under the law. I note that the trial court imposed a fine of Kshs. 100,000/= which to my view was excessive. It was not in dispute that the Applicant was a first offender. I find that this is a mitigating factor which the trial court should have taken into account during



sentencing as outlined by the Judiciary Sentencing Policy Guidelines (2016). I am guided by the decision in S vs. Scott-Crossley 2008 (1) SACR 223 (SCA) at para 35, wherein it was held thus: -

“Plainly, any sentence imposed must have deterrent and retributive force. But of course one must not sacrifice an accused person on the altar of deterrence. Whilst deterrence and retribution are legitimate elements of punishments, they are not the only ones, or for that matter, even the overriding ones. ....It is trite that it is in the interest of justice that crime should be punished. However, punishment that is excessive serves neither the interests of justice nor those of society.” (Emphasis added).

12. Having regard to the findings and observations that I have made in this ruling, I find that the period of over 7 months that the Applicant has so far spent in custody following her sentence on 19<sup>th</sup> August 2024 to the date of delivery of this ruling is sufficient punishment for the offences.
13. In the end, I find that the Application is merited and I hereby allow it. I direct that the Applicant may be set at liberty forthwith unless she is otherwise lawfully held.
14. It is so ordered.

**DATED AND DELIVERED AT NYAMIRA ON THIS 6<sup>TH</sup> DAY OF MARCH 2025.**

**W.A. OKWANY**

**JUDGE**

