



**Kimathi v Republic (Criminal Revision E470 of 2024)  
[2025] KEHC 2734 (KLR) (3 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 2734 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CRIMINAL REVISION E470 OF 2024  
HM NYAGA, J  
MARCH 3, 2025**

**BETWEEN**

**DANIEL KIMATHI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The accused was arraigned in court *vide* in *Meru criminal case. No. E1355 of 2024*. He was charged with the offence of stealing, contrary to section 268 as read with section 275 of the [Penal Code](#). He pleaded guilty and was convicted and sentenced to one(1) year imprisonment.
2. The accused has now applied for a revision of his conviction and sentence by the lower court.
3. Article 165(6) and (7) of the [Constitution](#) confers upon this Court supervisory jurisdiction over subordinate courts and empowers this Court to make any order to give any direction it considers appropriate to ensure fair administration of justice. The said provisions are couched in the following terms:

“(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.

(7) for the purpose of clause (6), the High Court may call for the record of any proceedings before any court or person, body of 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.”



4. The *Criminal Procedure Code* expounds on this jurisdiction. Sections 362 and 364 thereof provide that :-

“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 subordinate court“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 section 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.

5. The revisionary power vested in this court under Section 362 of the *Criminal Procedure Code* is principally to satisfy itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to regularity of any proceedings of any subordinate court.

6. *Joseph Nduvi Mbuvi v Republic* [2019] eKLR G.V. Odunga J (as he then was) while interpreting the provisions of Section 362 of the *Criminal Procedure Code* opined as follows:-

“A strict reading of section 362 of the *Criminal Procedure Code*, however, does not expressly limit the High Court’s revisionary jurisdiction to final adjudication of the proceedings.

In my considered view, the object of the revisional jurisdiction of the High Court is to enable the High Court, in appropriate cases, whether during the pendency of the proceedings in the subordinate court or at the conclusion of the proceedings to correct manifest irregularities or illegalities and give appropriate directions on the manner in which the trial, if still ongoing, should be proceeded with...

Not only is the jurisdiction exercisable where the subordinate court has made a finding, sentence or order but goes on to state that it is also exercisable to determine the regularity of any proceedings of any such subordinate court as well.”

7. As stated earlier, the accused pleaded guilty.

8. The manner of recording of a plea is provided for in section 207(1) and (2) of the *Criminal Procedure Code* which provides as hereunder:

- (1) The substance of the charge shall be stated to the accused person by the court, and he shall be asked whether he pleads not guilty, guilty or guilty subject to a plea agreement;
- (2) If the accused person admits the truth of the charge otherwise than by a plea agreement his admission shall be recorded as nearly as possible in the words used by him, and the court shall



convict him and pass sentence upon or make an order against him, unless there appears to it sufficient cause to the contrary:

Provided that after conviction and before passing sentence or making any order the court may permit or require the complainant to outline to the court the facts upon which the charge is founded.

9. The procedure was also set out in the well-known case of *Adan v Republic* [1973] EA 445 and reiterated in *Ombena v Republic* [1981] eKLR.
10. I have looked at the matter that is the subject of this revision. I am of the view that the plea taking process failed to adhere to the guidelines set out by the law and in the two authorities cited hereinabove. I will give my reasons.
11. First, I note that the trial court convicted the accused after he had already mitigated. The conviction on a plea of guilty ought to have preceded the mitigation. The mitigation is only geared towards the sentence, after the conviction.
12. It is also noted that the court was made aware of the accused's alleged illness. The court ought to have made an enquiry as what ailment he suffered from and ascertain if it affected his ability to understand the proceedings and confirm that his plea of guilty was unequivocal.

It is well settled law that a plea of guilty ought to be entered once the court is certain that an accused person's plea is unequivocal after the charges are read out to him. The importance of an unequivocal plea of guilty was stressed by Joel Ngugi, J (as he then was) in *Simon Gitau Kinene v Republic* [2016] eKLR when he stated that:

‘ Finally, courts have always held that extra caution needs to be taken in the case of undefended defendants who plead guilty. I have previously held that where an Accused Person is unrepresented, the duty of the Court to ensure the plea of guilty is unequivocal is heightened. In *Paulo Malimi Mbusi v R Kiambu* Crim. App. No. 8 of 2016 (unreported) this is what I said and I find it relevant here:

In those cases [where there is an unrepresented Accused charged with a serious offence], care should always be taken to see that the Accused understands the elements of the offence, especially if the evidence suggests that he has a defence... To put it plainly, then, one may add that where an unrepresented Accused Person pleads guilty to a serious charge which is likely to attract custodial sentence, the obligation of the court to ensure that the Accused Person understands the consequences of such a plea is heightened. Here, the Court took no extra effort to ensure this. In these circumstances, given the seriousness of the charge the Court was about to convict and sentence the Accused Person for, it behooved the Court to warn the Accused Person of the consequences of a guilty plea.”

13. In *Alexander Lukoye Malika v Republic* [2015] eKLR the Court of Appeal pointed to circumstances under which a conviction based on a plea of guilty can be interfered with. It was held as follows.

“ A court may only interfere with a situation where an accused person has pleaded guilty to a charge where the plea is imperfect, ambiguous or unfinished such that the trial court erred in treating it as a plea of guilty. Another situation is where an accused person pleaded guilty as a result of mistake or misapprehension of the facts. An appellate court may also interfere where the charge laid against an accused person to which he has pleaded guilty disclosed no



offence known to law. Also where upon admitted facts the Appellant could not in law have been convicted of the offence charged.”

14. Being of the view that the plea taking was not as provided by the law, and that the plea of guilty cannot be said to have been unequivocal, I find good reason to interfere with the conviction and sentence. Consequently, I hereby set aside the conviction and sentence.
15. Should the court order a re-trial?
16. I note that the accused has already served half of his sentence. I don't think that it would serve justice to make him undergo another trial. Even if there was a second conviction, I don't think that it would do more than the custodial sentence he has served in terms of reforming or punishing the accused.
17. In the circumstances, I direct the Applicant be set at liberty unless he is lawfully held.

**DATED, SIGNED & DELIVERED AT MERU THIS 3<sup>RD</sup> DAY OF MARCH, 2025.**

**H.M. NYAGA**

**JUDGE**

