



REPUBLIC OF KENYA



KENYA LAW
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**Muchina v Republic (Criminal Revision E001 of 2025)
[2025] KEHC 3592 (KLR) (20 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3592 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CRIMINAL REVISION E001 OF 2025
JK SERGON, J
MARCH 20, 2025**

BETWEEN

ALEX MUCHINA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged with two counts of felling trees in a public forest without authority from chief conservator contrary to section 64 (1) (a) as read with section 64 (2) of the *Forest Conservation and Management Act* No. 34 of 2016 Laws of Kenya and introducing logging tools in a public forest without licence 64 (1) (k) as read with section 64 (2) of the *Forest Conservation and Management Act* No. 34 of 2016 Laws of Kenya. The applicant was convicted on his own plea of guilt and on 4th November, 2024 sentenced to a fine of Kshs. 100,000/= or in default serve 6 months for the first count and sentenced to a fine of Kshs. 10,000/= or in default serve 3 months for the second count by Hon. F. Nekesa in Kericho Criminal Case No. E591 of 2024 *Republic v Alex Muchina*.
2. The applicant has moved this court pursuant to the provisions of Sections 362, 364 and 367 of the *Criminal Procedure Code* cap 75 Laws of Kenya urging this court to review his sentence. The Applicant stated he is a single parent after he separated with his wife and that he is taking care of four children who depend on him fully for the subsistence and upkeep.
3. The matter came up for inter partes hearing, on one part, the applicant urged this court to consider his application and review his sentence. On the other part, the learned prosecutor vehemently opposed the application contending that the sentences imposed by the learned trial magistrate are proper and within the law.
4. I have considered section 348 of the *Criminal Procedure Code* which provides that; “No Appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that



plea by a subordinate court except as to the extent or legality of the sentence.” It is clear from the above quoted excerpt that the Applicant has a right of Appeal as against the sentence. The Applicant opted to file this Revision instead of challenging the Order on sentence by way of an Appeal. The Law does not pursue a party who is entitled to challenge the order on conviction or sentence on Appeal to personally approach the Court for revision. It would appear from the provision of Sections 362 and 364 of the Criminal Procedure Code that the Court may act suo moto and may be prompted by another person or body other than the convict to exercise its power of revision. Section 364(5) of the Criminal Procedure Code provides that; “When an appeal lies from a finding, sentence or order and no appeal is brought, no proceedings by way of revision shall be entertained at the instance of the party who could have appealed.”

5. In the case Martin Mavuti Kituyi v Republic HCCR. Revision No. 27 of 2013 the court rendered itself as follows; “... the very nature of revision as a discretionary remedy explains the policy underpinnings of Section 364(5) of the Criminal Procedure Code; that revision should not be a substitute for an appeal whatsoever or insisted upon by a party who has not filed an Appeal where one was provided for. Revision primarily serves to put right instances where a finding, sentence, order or proceedings of a lower court are tainted by incorrectness, impropriety, illegality or irregularity...”
6. Having personally approached this court to prompt this court to exercise its supervisory power of revision, the applicant breached the Provisions of Section 364 (5) of the Criminal Procedure Code. I find the revision to be incompetently before this court. The same cannot be entertained by this court. I hereby issue an order striking out the revision.

**DATED, SIGNED AND DELIVERED AT KERICHO THIS 20TH DAY OF
MARCH, 2025**

.....

J.K. SERGON

JUDGE

In the Presence of:-

C/Assistant – Rutoh

Prosecutor – Masisa

Applicant – Present in Person

