



**Nyambura v Republic (Criminal Revision E561 of 2023)
[2025] KEHC 3347 (KLR) (19 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3347 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CRIMINAL REVISION E561 OF 2023
CW GITHUA, J
MARCH 19, 2025**

BETWEEN

WALLACE NJUGUNA NYAMBURA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant, Wallace Njuguna Nyambura, was tried and convicted of the offence of breaking into a building and committing a felony, contrary to Section 306 (a) as read with Section 306 (b) of the [Penal Code](#). He was sentenced to 4 years imprisonment.
2. The particulars of the offence allege that on diverse dates between the 8th May 2022, and 9th July 2022, at Gakira sub location, Muguru Location in Kangema sub-county, within Murang'a County, jointly with others not before court, the applicant broke and entered a building namely, a boutique shop belonging to Judy Wanjiku Muchiri and stole assorted clothes, shoes, cosmetic products, salon equipment, mattresses, all valued at Kshs. 750,000.
3. In his undated Notice of Motion filed on 23rd November 2023, the applicant sought review of the above sentence but besides enumerating the law on which he anchored his application, he did give reasons why he wanted the sentence reviewed downwards or be substituted with a non-custodial sentence.
4. At the hearing, the applicant made brief oral submissions in which he stated that his only complaint was that the learned trial magistrate erred by failing to take into account the period of 1 year and 4 months which he had spent in lawful custody prior to his sentence.
5. The application was contested by the respondent. Ms. Muriu, learned prosecution counsel submitted that the trial court considered all factors when sentencing the applicant, including the period he had spent in lawful custody which according to her was 1 year and 3 months. She urged me to find that



the learned trial magistrate properly exercised her discretion when sentencing the applicant and that I should not interfere with the sentence as prayed.

6. Having considered the application and the submissions made by both parties, I find that the application invokes the revisional jurisdiction of the High Court which is conferred by Section 362 as read with Section 364 of the *Criminal Procedure Code* (CPC).
7. Section 362 of the CPC empowers this court to call for and examine the record of any criminal proceedings before the lower court to satisfy itself as to the correctness, legality or propriety of any finding, sentence, or order recorded or passed by the trial court and the regularity of the court's proceedings.
8. I entirely agree with Odunga, J (as he then was) when he explained in *Joseph Nduvi Mbuvi V Republic*, (2019) eKLR the objective of this court's revisional jurisdiction. The learned judge expressed himself as follows

“.....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. In other words, the High Court's revisionary jurisdiction includes ensuring that where the proceeding in the lower court has been legally derailed, necessary directions are given to bring the same back on track so that the trial proceeds towards its intended destination without hitches. 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.”

9. In this case, the applicant has complained that when sentencing him, the learned trial magistrate erred by failing to take into account the period he had spent in lawful custody.

A perusal of the trial court's record shows that the applicant was arrested on 18th July 2022. He was arraigned in court on 20th July 2022 and although he was admitted to bond, he was unable to comply with the terms ordered by the court and he thus remained in custody throughout the trial. He was sentenced on 26th October 2023. This therefore means that he was in lawful custody for a period of about 1 year and 3 months, not 1 year and 4 months as he alleged.

10. Contrary to the allegations made by the applicant, a reading of the learned trial magistrate's sentencing notes shows clearly that when sentencing the applicant, the trial court fully complied with Section 333 (2) of the *Criminal Procedure Code* and took into account the period the applicant had spent in lawful custody.
11. My analysis of the trial court's record does not show that when sentencing the applicant, the learned trial magistrate erred in any way or abused her discretion. The sentence was lawful as it was in accordance with the law. I cannot also say that the sentence was harsh or manifestly excessive as to justify intervention by this court considering that according to the record, the applicant was not a first offender.
12. For all the foregoing reasons, I am satisfied that this application fails to meet the threshold for revision as envisaged in Section 362 of the *Criminal Procedure Code* and it is accordingly dismissed.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MURANGA THIS 19TH MARCH 2025



HON. C.W. GITHUA

JUDGE

In the Presence of :

The Applicant

Ms Wambani for the Respondent

Ms Susan Waiganjo, Court Assistant

