



REPUBLIC OF KENYA



**KENYA LAW**  
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**Chitsunyu v Republic (Criminal Revision E105 of 2023)  
[2025] KEHC 4456 (KLR) (4 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4456 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MALINDI  
CRIMINAL REVISION E105 OF 2023**

**M THANDE, J**

**APRIL 4, 2025**

**BETWEEN**

**MWAMBEYU MAGONGO CHITSUNYU ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. By an application filed on 30.10.23, the Applicant seeks review of the sentence imposed upon him, which he says is harsh and does not take into account that he is a first offender. Further that he saved the trial court's time by pleading guilty.
2. The facts are that the Applicant was charged in *Mariakani Criminal Case No. E299 of 2022* with the offence of stock theft contrary to Section 278 of the *Penal Code* and dealing in wildlife trophy of critically endangered species contrary to Section 92(2) of the *Wildlife Conservation and Management Act*, 2013. Initially, the Applicant pleaded not guilty to both offences.
3. On 24.10.22 however, the Applicant stated that he wished to change his plea and pleaded guilty to the offence of stock theft. Although the offence carries a sentence of 14 years, the trial court considered the circumstances and the Applicant's mitigation but noting that the Applicant was a repeat offender who appeared not to have learned a lesson from a previous imprisonment, sentenced him to 7 years imprisonment.
4. As regards the latter offence of dealing in wildlife trophy of critically endangered species, the Applicant changed his plea on 3.11.22 and pleaded guilty. The trial court sentenced the Applicant to the mandatory minimum sentence of 7 years imprisonment.
5. The Respondent opted not to file a response to the Application.



6. The Applicant seeks that the Court reviews his sentence and grant him a lenient sentence pursuant to Article 50(2)(p) and (q) of the Constitution. He also seeks that the 2 sentences be combined to run concurrently.
7. The record shows that in the first count, the Applicant was sentenced to 7 years imprisonment on 24.10.22 while in the second count, he was sentenced to 7 years imprisonment on 3.11.22. Nowhere in the record does it indicate that the sentences are to run consecutively.
8. Article 50(2)(p) and (q) of the Constitution relied on by the Applicant provide:
  1. Every accused person has the right to a fair trial, which includes the right—
    - (p) to the benefit of the least severe of the prescribed punishments for an offence, if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing;
    - (q) if convicted, to appeal to, or apply for review by, a higher court as prescribed by law.
9. A plain reading of Article 50(2)(p) shows that the same relates to an offence in respect of which punishment has been changed between the time of commission of the offence and sentencing. In such event, an accused person shall be entitled to the least severe punishment. Clearly this provision does not relate to every sentence nor is it applicable in this case.
10. Article 50(2)(q) guarantees to every convicted person, the right to appeal to, or apply for review by, a higher court as prescribed by law. The Applicant has availed this right by seeking review of his sentence.
11. The Constitution has conferred upon this Court supervisory jurisdiction over subordinate courts. Article 165(6) and (7) provides as follows:
  - (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 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
12. In exercise of its supervisory jurisdiction, this Court is empowered to call for the record of proceedings in such subordinate courts, and make and give appropriate orders and directions as it deems necessary to ensure the fair administration of justice.
13. To give effect to this provision with regard to criminal matters, the Criminal Procedure Code provides for revision powers of the Court. It also elaborates the purpose of calling for the record of proceedings in subordinate courts by this Court, which is to satisfy itself as to the correctness, legality or propriety of any finding or order. Section 362 of the Criminal Procedure Code provides:

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.
14. Where the Court finds after examining the record of proceedings before a subordinate court that the same are wanting in correctness or that there is illegality or impropriety of a finding, order or sentence, the Court may by dint of the revision powers conferred upon it by Section 364 enhance the sentence or alter or reverse the order except that of an acquittal.



15. Section 364(5) is explicit that 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.
16. Section 347 of the *Criminal Procedure Code* provides that a person convicted on a trial held by a subordinate court may appeal to the High Court. Our courts have repeatedly stated in many cases, that where a clear procedure for redress is prescribed by the Constitution or a statute, that procedure should be strictly followed. One such case is *Speaker of the National Assembly v James Njenga Karume* [1992] eKLR where the Court of Appeal stated:

In our view, there is considerable merit in the submission that where there is a clear procedure for the redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed.
17. The Applicant has not demonstrated that the sentence imposed upon him is illegal. In the premises the orders sought cannot be granted by this Court sitting as a revision court. Flowing from the above stated provisions of the law and the authority cited, the Applicant's redress lies with the appellate court. It is in the exercise of its appellate jurisdiction that this Court can examine the record and look at the harshness or otherwise of the sentence complained about and make a decision thereon.
18. In light of the foregoing, the Court finds that the Application is devoid of merit and the same is hereby dismissed.

**DATED SIGNED AND DELIVERED IN MALINDI THIS 4<sup>TH</sup> DAY OF APRIL 2025**

.....

**M. THANDE**

**JUDGE**

