



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mukuru v Republic (Criminal Revision E149 of 2023)  
[2024] KEHC 3764 (KLR) (18 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3764 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT CHUKA  
CRIMINAL REVISION E149 OF 2023**

**LW GITARI, J**

**APRIL 18, 2024**

**BETWEEN**

**LYFORD KIMATHI MUKURU ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(From Original Conviction and sentence in Criminal Case No. 661  
of 2019 of the Senior Principal Magistrate's Court at Marimanti)*

**RULING**

1. The applicant Loyford Kimathi Mukuru filed a Notice of Motion pursuant to Section 362 and 364 of the [Criminal Procedure Code](#) seeking the following orders:-
  - a. This court be pleased to review the sentence in Criminal Case No.661/2019 at the Chief Magistrate's Court Chuka
  - b. ....
  - c. That his health has deteriorated since he was put in custody as per attached documents.
2. The application is based on the grounds that since he was committed to prison his health deteriorated. He therefore urges the court to hand him none custodial sentence. The motion is supported by the affidavit of the applicant. The application for review of the sentence was opposed by the respondent who states that the applicant was charged with stealing by servant contrary to Section 281 of the [Penal Code](#), Forgery contrary to Section 351 of the [Penal Code](#) and uttering a false document contrary to Section 355 of the [Penal Code](#). That the appellant pleaded not guilty to all the charges and the matter proceeded to full trial. The court ruled that he has a case to answer and he was put on his defence. He gave a sworn defence after which the court pronounced Judgment. The applicant was convicted and



sentence to serve six years imprisonment on each of the four counts. The sentence was ordered to run concurrently. The applicant then moved to this court seeking a revision of the said sentence.

### **Analysis and Determination:**

3. 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.”

4. The section gives the court jurisdiction to review orders issued by the sub-ordinate court for the purpose of satisfying itself as to the correctness, legality and or propriety of any finding, sentence or order recorded or passed and to the regularity of any proceedings Section 364 of the [Criminal Procedure Code](#) on the other hand provides for the powers of the Court on Revision.

It provides:-

“(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.

(c) in proceedings under section 203 or 296 (2) of the [Penal Code](#), the [Prevention of Terrorism Act](#), the Narcotic Drugs and Psychotropic Substances (Control) Act, the Prevention of Organized Crimes Act, the [Proceeds of Crime and Anti-Money Laundering Act](#), the [Sexual Offences Act](#) and the [Counter-Trafficking in Persons Act](#), where the subordinate court has granted bail to an accused person, and the Director of Public Prosecution has indicated his intention to apply for review of the order of the court, the order of the subordinate court may be stayed for a period not exceeding fourteen days pending the filing of the application for review.

(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:

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 than 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, 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.”

5. In this case the applicant submits that his health has deteriorated due to sickness and lack of proper diet in the prison.
6. I have perused the record of the lower court. I find that sentences imposed on the counts were proper as it is the sentence provided under the Sections of the *Penal Code* under which the applicant was charged. There is nothing to warrant this court to interfere with the sentence. The court while dealing with revision is supposed to consider the correctness, legality and the propriety of the orders imposed by the trial court. The record shows that the trial court considered the mitigation and called for a Probation Officer’s report which turned out to be negative. I find no reason to interfere with the sentence.
7. On the order of the sentences to run consecutively, the record shows that the offences were committed on different dates and trial court did not err by ordering the sentences to run consecutively. The High Court under Article 165(6) of the *Constitution*, High Court has jurisdiction to review a decision of the Subordinate Court. The Article provides as follows:-

“The High Court has supervisory jurisdiction over the sub-ordinate Courts and over any person exercising a judicial or quasi judicial function but not over a superior court.”

8. This supervisory jurisdiction is expounded under Section 362 and 364 of the *Criminal Procedure Code*, (supra). In a persuasive decision by Justice Ondunga (as he then was) in *Joseph Nduvi Mbuvi v Republic* (2019) eKLR, the Judge stated:-

“In my considered view the object of revisional jurisdiction of the High Court is to enable the High Court in appropriate cases whether during the pendency of the proceedings in the Sub-ordinate Courts or at the conclusion of the proceeding 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 revisionary jurisdiction includes ensuring that where the proceedings 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 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. It has also been held that the principle which will guide a sub-ordinate Court when applying Section 362 (supra) include-
  - a. Where the decision is grossly erroneous
  - b. Where there is no compliance with the provisions of the law.
  - c. Where the finding of fact affecting a decision is not based on evidence or it is a result of misleading or non-ready of the evidence on record.



- d. Where material evidence on the parties is not considered
  - e. Where judicial discretion is exercised arbitrarily or perversely if the lower court ignores facts and tries the accused of a lesser offence see *Prosecutor v Stephen Lesinko* (2018) eKLR, Nyakundi J.
10. Thus jurisdiction of the High Court on Revision is to correct manifest irregularities and illegalities. The applicant has not pointed out any irregularities or illegalities. He is urging the court to consider that he is sickly and his health is deteriorating. The trial magistrate considered a presentence report by a Probation Officer and highlight the plight of the victims.
11. She also considered the fact that the sum of money stolen exceeded Khs.5 million and is unlikely to be recovered from the accused. The learned trial magistrate stated that there is nothing to justify the imposition of any other sentence apart from a custodial sentence. The decision by the learned magistrate to impose a custodial sentence was well reasoned and based on the principles of sentencing. There is nothing irregular nor are there any illegalities. The sentence was ordered to run concurrently. For these reasons, I find that no ground has been established to warrant a review of the sentence. The medical records annexed show that he is receiving medical treatment and attention in the prison.

**Conclusion:**

12. The application lacks merits and is dismissed.

**DATED, SIGNED AND DELIVERED AT CHUKA THIS 18<sup>TH</sup> DAY OF APRIL 2024.**

**L. W. GITARI**

**JUDGE**

