



Kahari & 2 others v Republic (Criminal Miscellaneous Application E114 of 2022) [2024] KEHC 5312 (KLR) (17 May 2024) (Ruling)

Neutral citation: [2024] KEHC 5312 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL MISCELLANEOUS APPLICATION E114 OF 2022**

SM MOHOCHI, J

MAY 17, 2024

BETWEEN

MARK KAHARI 1ST APPLICANT

DANIEL KAMAU 2ND APPLICANT

JULIUS KIMANI 3RD APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicants Julius Kimani, Mark Kahari and Daniel Kamau moved this Court by way of notices of motion invoking the Court’s special jurisdiction of criminal review as provided for under Sections 362, 363 and 364 of the [Criminal Procedure Code](#).
2. The Applicants are all convicts serving a 5 years’ imprisonment term having been found guilty for the offence of vandalism of energy equipment contrary to Section 161 (1) (b) of the [Energy Act](#).
3. The Conviction and sentence took place in June 2021 after a three-year full trial.
4. The Applicants have served 12 months and now seek a non-custodial sentence, indicating they are now reformed, they have joined “Crime Si Poa” and generally appeal for the mercy of this Court.

Analysis and Determination.

5. This Court takes a dim view on applications for criminal revision that do not provide any basis for revision.
6. All Criminal revision under Section 362 must consider:
 - i. Whether the decision was erroneous?



- ii. Whether the convicting and sentencing magistrate did not comply with any law?
 - iii. If the decision is not based on a finding of fact not supported by evidence or
 - iv. Whether the material by the parties was not considered.
7. The above principles would then enable this Court to disturb sentence imposed; sentencing is discretion that should rarely be interfered with.
8. While the Applicants argue that they have now seen the light, that they were first time offenders and deserve pity and mercy, they subjected the tax payer to a full trial from 2019 to 2021 and this might have informed the custodial sentence.
9. The Court finds the Applications without merit. The same are dismissed.

DATED, SIGNED AND DELIVERED AT NAKURU ON THIS DAY OF 17TH DAY OF MAY 2024.

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S. MOHOCHI

JUDGE

