



**Kiptum v Republic (Miscellaneous Criminal Revision  
E002 of 2024) [2024] KEHC 4948 (KLR) (15 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 4948 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ITEN  
MISCELLANEOUS CRIMINAL REVISION E002 OF 2024**

**JRA WANANDA, J**

**MAY 15, 2024**

**BETWEEN**

**ALEX KIBET KIPTUM ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Although the Applicant does not expressly state so, I believe this Court has been moved under its Revisionary jurisdiction as provided under Article 165(6) and (7) of *the Constitution*.
2. The Applicant was convicted in Iten CMCR Case No. 902 of 2023 on his own plea of guilty for the offence of stealing stock (a cow valued at Kshs 60,000/-) contrary to section 278 of the *Penal Code*. He was then sentenced to serve 5 years in prison. The Applicant has now approached this Court vide the undated Notice of Motion filed herein on 29/02/2024 seeking orders that the remainder of his sentence be served under non-custodial terms.
3. The Application is premised on the grounds that the Applicant is now fully reformed, and now possesses skills in carpentry and theological studies attained while in custody, that he was barely 1 year in marriage when he was convicted and his wife continues to suffer, that he is a 1<sup>st</sup> offender. He also claimed that the trial Court ignored and disregarded his mitigation and that he is only 21 years old and by virtues of the sentence, he faces a gloomy future.
4. Learned State Counsel appearing for the State (Respondent) sought and was granted time to file a Response and Submissions to the Application. However, by the time of concluding this Ruling, I had not come across any such Response or Submissions.
5. The issue that arises for determination in this matter is “whether this Court should exercise its revisionary jurisdiction and substitute or review the sentence imposed by the trial Court”.



6. The jurisdiction of the High Court with regard to Revision is supervisory and is provided under *the Constitution* in article 165 (6) and (7) in the following terms:

“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.”

7. Section 362 of the *Criminal Procedure Code*, then provides as follows:

“Revision

362. Power of High Court to call for records

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.”

8. The operative phrase in considering Applications for revision is therefore “correctness, legality or propriety” of any finding, sentence or order made by the lower Court.

9. The revisionary jurisdiction of the High Court was examined by Odunga J (as he then was) in the case of *Joseph Nduvi Mbuvi vs Republic* [2019] eKLR as follows:

“In my considered view, 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.”

10. The operative phrase used by Odunga J above is therefore “to correct manifest irregularities or illegalities”.

11. On his part, Nyakundi J, in *Prosecutor vs Stephen Lesinko* [2018] eKLR outlined the principles that should guide a Court in exercising its reversionary jurisdiction as follows:

- 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 the decision is not based on evidence or it is result of misreading or non-reading of evidence on record;
  - d) Where the material evidence on the parties is not considered; and
  - e) Where the judicial discretion is exercised arbitrarily or perversely if the lower court ignores facts and tries the accused of lesser offence.
12. In this matter, as aforesaid, the Applicant was convicted on his own plea of guilty for the offence of stealing stock (a cow valued at Kshs 60,000/-) contrary to section 278 of the *Penal Code*. He was then sentenced to serve 5 years in prison. I have looked at the said provisions which is the general penalty provision provides as follows:
- “If the thing stolen is any of the following things, that is to say, a horse, mare, gelding, ass, mule, camel, ostrich, bull, cow, ox, ram, ewe, wether, goat or pig, or the young thereof the offender is liable to imprisonment for a period not exceeding fourteen years.”
13. Since the Applicant was sentenced to 5 years imprisonment, the trial Magistrate was clearly within her powers and the sentence was lawful. While the Learned Magistrate could have sentenced the Applicant for a period of up to 14 years imprisonment, she only gave 5 years.
14. Regarding the invocation of reversionary powers of the High Court, in the same case of *Joseph Nduvi Mbuvi vs Republic* (supra), Odunga J stated further as follows:
- “14. It is, however my view that the jurisdiction should not be invoked so as to micro-manage the Lower Courts in the conduct and management of their proceedings for the simple reason that if every ruling of the Lower Court and which went against a party were to be subjected to the revisionary jurisdiction of the Court, floodgates would be opened and the Court would be inundated with such applications thus making it practically impossible for the Lower Courts to proceed with any case to its logical conclusion. ....”
15. It is therefore clear that the revisionary jurisdiction of the High Court should only be invoked where there are glaring acts or omissions. In this case, it has not been demonstrated in any way or even alleged that there were any manifest “irregularities” or “illegalities” or even “arbitrariness” or any “glaring acts or omissions” which this High Court should remedy. There is also no evidence that the Applicant’s mitigation was ignored. The “correctness, legality or propriety” of the sentence has also not been questioned. The Application is basically founded on the basis of sympathy and nothing else. That is not a sufficient ground for this Court to invoke its powers of Revision.
16. In the circumstances, the Applicant’s undated Notice of Motion filed herein on 29/02/2024 is hereby dismissed.

**DELIVERED, DATED AND SIGNED AT ELDORET THIS 15<sup>TH</sup> DAY OF MAY 2024**

**WANANDA J. R. ANURO**

**JUDGE**

Delivered in the Presence of:

Ms Mwangi State Counsel

Applicant in person

