



REPUBLIC OF KENYA



**Mangula v Republic (Criminal Revision E033 of 2023)  
[2024] KEHC 5257 (KLR) (9 May 2024) (Revision)**

Neutral citation: [2024] KEHC 5257 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
CRIMINAL REVISION E033 OF 2023**

**JK SERGON, J**

**MAY 9, 2024**

**BETWEEN**

**KELVIN OCHIENG MANGULA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**REVISION**

1. The applicant was charged with various offences. In Count I he faced a charge of stealing stock contrary to Section 278 of the *Penal Code*. He was convicted on his own plea of guilty and was sentenced to three (3) years imprisonment. In Count II the Applicant faced a charge of being in possession of cannabis sativa contrary to section 3 (1) as read with section 2 (a) of the *Narcotic Drugs and Psychotropic Substances Act* No. 4 of 1994. He was too convicted on his own plea of guilty and was sentenced to serve (3) years imprisonment. In Count III, the Applicant was charged with a charge of destroying evidence contrary to section 116 as read with section 36 of the *Penal Code*. He was again convicted on his own plea of guilty and was sentenced to two (2) years imprisonment.
2. The order on conviction and sentence were pronounced on 7<sup>th</sup> July, 2022. Honourable F. Nyakundi directed that the sentences in the three counts to run consecutively vide Kericho CM’s Criminal Case No. E082 of 2022 Republic v Kelvin Ochieng Mangula.
3. The applicant has moved this court beseeching this Court to review the sentence meted out and issue orders to have the sentences on the three counts run concurrently instead of consecutively.
4. The Applicant stated that he pleaded guilty to the charges hence saved the court’s time for trial. He further stated that he was youthful and in his prime years hence productive and that he was remorseful and while incarcerated he had learnt that crime does not pay.
5. Section 348 of the *Criminal Procedure Code* *inter alia* as follow:- “No Appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate



court except as to the extent or legality of the sentence.” It is clear from the above quoted excerpt that the Applicant has a right of Appeal as against the sentence.

6. The Applicant opted to file this Revision instead of challenging the Order on sentence by way of an Appeal. The Law does not permit a party who is entitled to challenge the order on conviction or sentence on Appeal to personally approach the Court for revision.
7. It would appear from the provision of Sections 362 and 364 of the Criminal Procedure Code that the Court may act *suo moto* or may be prompted by another person or body other than the convict to exercise its power of revision.
8. Section 364(5) of the Criminal Procedure Code provides that; “When an appeal lies from a finding, sentence or order and no appeal is brought, no proceedings by way of revision shall be entertained at the instant of the party who could have appealed.”
9. In the case Martin Mavuti Kituyi v Republic HCCR. Revision No. 27 of 2013 the court rendered itself as follows;

“... the very nature of revision as a discretionary remedy explains the policy underpinnings of Section 364(5) of the Criminal Procedure Code; that revision should not be a substitute for an appeal whatsoever or insisted upon by a party who has not filed an Appeal where one was provided for. Revision primarily serves to put right instances where a finding, sentence, order or proceedings of a lower court are tainted by incorrectness, impropriety, illegality or irregularity...”

10. Having personally approached this court to prompt this court to exercise its supervisory power of revision, the applicant breached the Provisions of Section 364 (5) of the Criminal Procedure Code.
11. Having perused the record placed before this court, it is clear that the Applicant had filed another Revision i.e Kericho Criminal Revision No.E.085 of 2022 whereof he applied to this court to exercise its supervisory jurisdiction of Revision and set aside the sentences meted out against him in the same matter. The aforesaid Revision was placed before Lady Justice Ongeri who considered the same and had it dismissed on 16<sup>th</sup> February, 2023. The Applicant did not disclose this fact. This Court having considered and determined a Revision is not allowed in law to entertain another revision. The Applicant is guilty of material non-disclosure. I find the revision to be incompetently before this court. The same cannot be entertained by this court. I hereby issue an order striking out the revision.

**DATED, SIGNED AND DELIVERED THIS 9<sup>TH</sup> DAY OF MAY, 2024**

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**J.K. SERGON**  
**JUDGE**

