



**Aboki v Republic (Criminal Revision E122 of 2023)
[2024] KEHC 12756 (KLR) (17 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12756 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
CRIMINAL REVISION E122 OF 2023
WA OKWANY, J
OCTOBER 17, 2024**

BETWEEN

BENARD NYACHOTI ABOKI APPLICANT

AND

REPUBLIC RESPONDENT

(From the original Conviction and Sentence in Criminal Case No. E812 of 2021 at Nyamira Chief Magistrate's Court by Hon. M.C. Nyigei Principal Magistrate on 5th October 2021)

RULING

1. The Applicant was charged with the offence of stealing a motorcycle contrary to Section 278A of the *Penal Code*. He also faced the alternative charge of handling stolen goods contrary to Section 322 (1) (2) of the *Penal Code*. He was, on 5th October 2021, convicted on his own plea of guilty on both counts and sentenced to serve three (3) years imprisonment.
2. He filed the present Application through a Notice of Motion on 6th December 2023 seeking a review of his sentence. The Application is brought sections 362, 329, 333 (2) of the *Criminal Procedure Code* and is supported by the Applicant's affidavit wherein he avers, inter alia, that he was a first offender, is remorseful for his actions and was the sole breadwinner for his young family comprising of six children.
3. Mr. Chirchir, Learned Prosecution Counsel did not oppose the application.
4. The only issue for determination is whether the Application is merited.
5. Article 165 of the *Constitution* stipulates 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.
6. Section 362 of the [Criminal Procedure Code](#) vests revisionary jurisdiction on the High Court as follows:

362. Power of the 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.

7. Section 364 of the [Criminal Procedure Code](#) outlines the manner in which such jurisdiction shall be exercised thus: -

364. Powers of the High Court on Revision

- (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.

- (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 that 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 a 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.

8. It is trite that sentencing is at the trial court’s discretion which discretion must not be interfered with unless it is shown that the sentence is manifestly excessive or that trial court acted on some wrong principles. (See [Bernard Kimani Gacheru v Republic](#) [2002] eKLR).



9. The offence for which the Applicant was charged with attracts a sentence of seven years imprisonment. The Appellant was sentenced to three years imprisonment and has been in custody from 5th October 2021. I find that the sentence was just and legal. I find no reason to revise the sentence.
10. In conclusion, I find that the Application lacks merit and I therefore dismiss it.
11. It is so ordered.

**RULING DATED, SIGNED AND DELIVERED AT NYAMIRA VIA MICROSOFT TEAMS THIS
17TH DAY OF OCTOBER 2024.**

W. A. OKWANY

JUDGE

