



**Chege v Republic (Criminal Revision E290 of 2024)
[2024] KEHC 12111 (KLR) (9 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12111 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CRIMINAL REVISION E290 OF 2024
CW GITHUA, J
OCTOBER 9, 2024**

BETWEEN

WILSON KAMAU CHEGE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant, Wilson Kamau Chege, approached this court through a Notice of Motion dated the 5th August 2024 seeking review of the sentence imposed on him by Murang'a Chief Magistrate's court in criminal case No. E614 of 2024.
2. The background to this application as can be ascertained from the records of the lower court is that the applicant was convicted on his own plea of guilty of the offence of stealing contrary to Section 268 (1) as read with Section 275 of the *Penal Code*. He was sentenced to five (5) years imprisonment. He was aggrieved by his sentence which he now urges this court to review and substitute with a lenient sentence.
3. The application is based on grounds that in passing sentence, the learned trial magistrate failed to consider the applicant's plea in mitigation and handed him a harsh and excessive sentence. The learned trial magistrate was also faulted for failing to appreciate that the applicant was a first offender and that the mobile phone he had stolen was recovered and returned to the complainant.
4. On 30th September 2024, this court, pursuant to Section 365 (1) of the *Criminal Procedure Code* (CPC) decided to determine the application without hearing any of the parties.
5. I have duly considered the application together with the depositions made in the supporting affidavit as well as the record of the trial court. I find that the application invokes the revisional jurisdiction of the High Court which is donated by Section 362 as read with Section 364 of the *CPC*.



6. Section 362 of the CPC empowers this court to call for and examine the record of any criminal proceedings in the lower court to satisfy itself as to the correctness, legality or propriety of any finding, sentence, or order recorded or passed by the court and the regularity of any proceedings therein.
7. The objective of granting the High Court wide revisional powers was to enable it effectively supervise the lower court to ensure that any errors that may be made in the course of criminal proceedings are corrected timeously to avoid injustice being visited on any of the parties. That is why when exercising its revisional jurisdiction, the court is under Section 364 CPC clad with all powers of an appellate court.
8. To further buttress this point, I wholly agree with Mativo J (as he then was) when he expressed himself in Republic v Anthony Thuo Karimi (2016) eKLR in the following terms;

“The revisional powers of a High Court are very wide. Such powers are intended to be used by the High Court to decide all questions as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed by an inferior criminal court and even as to the regularity of any proceeding of any inferior court. The object of conferring such powers on the High Court is to clothe the highest court in a state with a jurisdiction of general supervision and superintendence in order to correct grave failure or miscarriage of justice arising from erroneous or defective orders.”
9. Having stated the above, the question that begs an answer is whether the instant application meets the threshold for revision as provided for under Section 362 of the CPC.
10. The applicant’s main complaint appears to be that the trial court failed to consider his mitigation as a result of which it imposed a harsh and manifestly excessive sentence. Looking at the record of the trial court, I find no merit in the claim that the learned trial magistrate erred by failing to consider the applicant’s plea in mitigation. The truth of the matter is that the trial court considered his plea in mitigation but proceeded to misdirect itself by imposing a sentence that was beyond the sentence prescribed by the law.
11. Section 275 of the Penal Code which is the penal provision for the offence of theft clearly provides for a maximum penalty of three years imprisonment. The learned trial magistrate therefore committed an error of law when she sentenced the applicant to five years imprisonment contrary to the prescriptions of the law. The learned trial magistrate did not have discretion to impose a sentence which was not in accordance with the law.
12. Having found as I have above, I find that this application is merited and must be and is hereby allowed. Considering that the applicant was a first offender, the value of the mobile phone stolen and the fact that it was recovered and restored to the complainant and considering also the age of the applicant as stated in his plea in mitigation (20 years), I am convinced that the applicant will benefit more from being exposed to a rehabilitation programme than being imprisoned. I am satisfied that a term of imprisonment may not serve any of the other objectives of sentencing.
13. Consequently, I set aside the sentence of five years imprisonment imposed by the learned trial magistrate and substitute it with an order placing the applicant on probation for a period of two years with effect from today. The applicant is warned to follow all instructions given by the supervising Probation Officer and is informed of the repercussions for failure to comply.

DATED, SIGNED AND DELIVERED AT MURANGA THIS 9TH OCTOBER 2024.

C.W GITHUA

JUDGE

