



REPUBLIC OF KENYA



**Mwangi v Republic (Criminal Revision E356 of 2023)
[2023] KEHC 23769 (KLR) (Crim) (19 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 23769 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL REVISION E356 OF 2023
K KIMONDO, J
OCTOBER 19, 2023**

BETWEEN

STEPHEN GIOKO MWANGI APPLICANT

AND

REPUBLIC RESPONDENT

*(Revision from the sentence in Kibera Criminal Case E1428 of 2022
by E. Riany, Senior Resident Magistrate, dated 31st October 2022)*

RULING

1. The applicant was adjudged guilty of theft of Kshs 140,000 contrary to section 268 of the [Penal Code](#); and, withholding a message delivered erroneously to him contrary to section 35 of the [Computer Misuse and Cybercrimes Act](#) 2018.
2. On the first count, he was sentenced to a fine of Kshs 140,000 in default to serve 2 years in prison; and, on the second count to a fine of Kshs 50,000 or in default 6 months in prison.
3. The applicant seeks revision of the sentence through a Notice of Motion dated 20th March 2023. In a synopsis, he contends the fine is excessive or beyond his reach; and, that he deserves a more lenient or non-custodial sentence.
4. My view is as follows. Under section 362 of the [Criminal Procedure Code](#), 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.



5. I called for the original record of the lower court. This being a revision, and by dint of section 365 of the *Criminal Procedure Code*, no party has a right to be heard either personally or by an advocate before the High Court when exercising its powers of revision.
6. The facts here are fairly straightforward: The complainant erroneously transferred Kshs 140,000 into the applicant's mobile account; and, the applicant refused to reverse the transaction. Having converted the proceeds for his own use, it cannot now not fall from his lips that the equivalent fine was excessive. True, he is a first offender. But I concur that the nature of the crime called for a deterrent sentence. The punishment was also well within the law. I thus decline to disturb it.
7. The upshot is that the revision is unmerited. It is hereby dismissed and this file closed. The Deputy Registrar shall notify the applicant and the Director of Public Prosecutions of this order.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 19TH DAY OF OCTOBER 2023.

KANYI KIMONDO

JUDGE

Ruling read in chambers in the presence of-

Mr. E. Ombuna, Court Assistant.

