



**Macharia v Republic (Criminal Revision E208 of 2024)  
[2024] KEHC 15654 (KLR) (20 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 15654 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MURANG'A  
CRIMINAL REVISION E208 OF 2024  
CW GITHUA, J  
NOVEMBER 20, 2024**

**BETWEEN**

**SAMUEL KANG'ERI MACHARIA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. In the undated Notice of Motion apparently filed on 29<sup>th</sup> April 2024, the applicant sought review of his sentence imposed in Kangema Criminal Case No E 426 of 2023.
2. The record of the lower court shows that the applicant was tried and convicted of the offence of breaking into a building and committing a felony contrary to section 306(a) of the *Penal Code*. He was sentenced to serve two years imprisonment.
3. He now seeks a review of the above sentence on grounds that he was a first offender; that he was remorseful and regrets having committed the offence and that he was now rehabilitated. He beseeched this court to substitute the sentence imposed by the trial court with a more lenient sentence.
4. When the application came up for hearing, the applicant introduced another ground for review which he had not stated in his application. He claimed that the only concern he had about his sentence was that in sentencing him, the learned trial magistrate did not consider the time he had spent in lawful custody. He invited this court to review the sentence in order to factor in the time he had spent in custody.
5. The application was opposed by the learned prosecution counsel, Ms Muriu. She asked the court to note that the trial court had specifically indicated that it had taken into account the eight months the applicant had spent in custody prior to sentence. She urged the court not to disturb the trial court's sentence.



6. Under section 367 of the *Criminal Procedure Code*, this court has wide and unfettered power to review a sentence, order or finding made by the trial court in criminal proceedings if it was satisfied that the impugned order or sentence was illegal, or was made in error or was a product of impropriety on the trial courts part.
7. I have read through the trial court's record including the learned trial magistrate's pre-sentence notes. I note that in sentencing the applicant, the learned trial magistrate considered his plea in mitigation, his age and the nature of offence he had committed. He also specifically noted the period he had spent in lawful custody which he computed to be eight months. The applicant's complaint that the learned trial magistrate erred by not taking into account the period he had spent in lawful custody is thus not merited.
8. I have also not come across any indication from the court record that in sentencing the applicant, the learned trial magistrate erred in principle or in any other way. The court considered the accused's plea in mitigation and all other relevant factors. The sentence was not illegal as it was in accordance with the law.
9. In the premises, I find no reason to warrant a review of the applicant's sentence as sought. The application is therefore unmerited and it is consequently dismissed.

File is now closed.

**HON. C.W. GITHUA**

**JUDGE**

**20. 11.2024**

