

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CRIMINAL REVISION NO. E111 OF 2021.

FRANCIS KIMANI NGUGI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The applicant was charged and convicted for the offence of **stealing energy equipment contrary to section 169 (1) ,(3) of the Energy Act** as well as **vandalism of electrical apparatus contrary to section 169 (1),(b) of the said act**. He was sentence to serve 5 years' imprisonment.
2. He has applied for the revision of the said sentence based on the **Provisions of Section 363 and 364 of the Criminal Procedure Code as well as Article 165 (3) and (9) of the Constitution**.
3. In his mitigation he stated that he was a first offender and remorseful and that he was a family man and that he wishes to be considered for probation under the **Probation of Offenders Act No. 64 of the Laws of Kenya**.
4. The learned state counsel opposed the application on the grounds that there was no error on the face of record and he should instead consider appealing the said judgement.
5. The court agrees with the respondent. Sentencing is always discretionary. There is no evidence that the same was excessive or at all. This courts powers under **Section 363 and 364 of the Criminal Procedure Code** are clear and specific. The court will only interfere if the trial court failed to consider or take into account salient factors enumerated therein.
6. For now, the application for revision is disallowed. Let the applicant file a formal appeal if he so wishes.

DATED SIGNED AND DELIVERED VIA VIDEO LINK ANT NAKURU THIS 4TH DAY OF NOVEMBER 2021.

H K CHEMITEL.

JUDGE