

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT GARISSA**

**MISC. CRIMINAL APPLICATION NO. E032 OF 2025**

**HASSAN IYA.....**

**.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**(Being revision application against the sentence delivered on 24.7.2025 by Hon. R. Aganyo (PM) in Wajir PM's Court Criminal Case Number E207 of 2025).**

**RULING**

1. The applicant herein was charged jointly with two others with the offence of being unlawfully present in Kenya contrary to Section 53(l) (j) as read with Section 53(2) of the Kenya Citizenship and Immigration Act No. 12 of 2012.
2. Particulars were that, on the 3<sup>rd</sup> day of July, 2025 at around 2200hrs at Manyalo in Wajir East Sub-County within Wajir County, being an Ethiopian Citizens, he was found to be in Kenya illegally and without any documents to warrant his stay in Kenya which is in contravention of the said Act.
3. Having pleaded guilty, he was convicted and subsequently sentenced to serve one year in jail and upon completion of serving sentence, he be repatriated to Ethiopia, his home country.

4. Aggrieved by the sentence, he has now moved to this court vide an undated application for review of sentence seeking review on grounds that;

**(i) He is a first offender.**

**(ii) He pleaded guilty to the offence**

**(iii) He is remorseful of his offence and has learnt to be a law abiding citizen.**

**(iv) He is ready to be repatriated back to his country.**

**(v) That he was brought to Kenya by someone who is a Kenyan citizen who promised him a greener pasture and would employ him.**

**(vi) He has no pending appeal.**

**(vii) That he did not give proper mitigation during sentencing.**

**(viii) He is a father of eight children and sole bread winner of his family and his incarceration has placed them in a very difficult situation.**

**(ix) He humbly begged this Honourable Court for leniency and reduce his one year sentence.**

**(x) That he is not applying against sentence and conviction but applying for review of a sentence.**

5. The applicant is seeking for Court's leniency by reviewing his sentence. The prosecution is opposed to the application on grounds that the sentence is reasonable and that the applicant has not appealed.

6. I have considered the application herein and the response thereof. The law governing revision in a criminal case is captured under Section 362 and 364 of the CPC. Section 362 and 364 provides as follows;

**“362. Power of 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.**

**364. Powers of 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.**
- (c) in proceedings under section 203 or 296(2) of the Panel Code (Cap. 63), the Prevention of Terrorism Act (Cap. 59B), the Narcotic Drugs and Psychotropic Substances (Control) Act (Cap. 245), the Prevention of Organized Crimes Act (Cap. 59), the Proceeds of Crime and Anti-Money Laundering Act (Cap. 59A), the Sexual Offences Act (Cap. 63A) and the Counter-Trafficking in Persons Act (Cap.**

**61), where the subordinate court has granted bail to an accused person, and the Director of Public Prosecution has indicated his intention to apply for review of the order of the court, the order of the subordinate court may be stayed for a period not exceeding fourteen days pending the filing of the application for review.**

**(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.**

**(1) 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 than 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, 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.**

7. It is clear from the above provisions that an application for review of sentence can be entertained only for purposes of the court satisfying itself as to the correctness, legality or propriety of the proceedings. Section 364(5) of the CPC is emphatic that no application for revision should be entertained where an appeal lies from a sentence or order. This position was espoused in Criminal Revision number 194 of 2023 Kisii High court in the case of **Barongo Siany Atembe vs Republic**.
8. From the record, the court is merely being asked to exercise mercy on the applicant. There is no justification to interfere with the sentence which the trial court imposed after exercising due discretion. Accordingly, the application is dismissed for lack of merit.

Dated, signed and delivered in open court this 9<sup>th</sup> day of October, 2025

.....

**J. N. ONYIEGO**

**JUDGE**