



**Maina v Republic (Criminal Revision E231 of 2024)
[2025] KEHC 15396 (KLR) (31 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15396 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NANYUKI
CRIMINAL REVISION E231 OF 2024
AK NDUNG’U, J
OCTOBER 31, 2025**

BETWEEN

LEWIS MAINA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Lewis Maina (hereinafter the Applicant) moved this court vide an application titled Sentence Review wherein he seeks review of a sentence of 5 years imprisonment meted out on him by Hon. E. Deche RM for the offence of malicious damage to property. He asserts that he is a first offender and that his ailing mother relies on him. He seeks a non-custodial sentence.
2. The application is opposed and the Respondent filed grounds of opposition stating that the revisionary jurisdiction of this court is divested under Section 364(5) of the Criminal Procedure Code. That it has not been shown that the conviction and sentence by the trial court was incorrect, illegal or improper neither were they irregular. It is averred that the sentence was lawful and the trial court complied with the law in passing the sentence.
3. The Applicant submitted orally stating that his prayer was for a review of the sentence. That he is a first offender. The Respondent filed written submissions in which it is urged that the court’s jurisdiction under Section 362 of the Criminal Procedure Code is not available to the Applicant and that the court is divested of jurisdiction by dint of Section 364(5) of the Code. Further that the sentence was lawful.
4. The jurisdiction of the High Court donated under section 362 to 367 of the CPC, is a narrow one. The Supreme Court of India in the case of Krishnan and Another v Krishnaveni and ano {1997} 4 SCC 241 addressing similar provisions in the Indian Criminal Procedure Code stated;

“It is seen that exercise of the revisional power by the High Court is to call for the records of any inferior Criminal Court and to examine the correctness, legality or



propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court and to pass appropriate orders.Section 397 gives powers to the High Court to call for the records as also suo motu power under Section 401 to exercise the revisional power on the grounds mentioned therein, i.e., to examine the correctness, legality or propriety of any finding, sentence or order, recorded or passed and as to the regularity of any proceedings of such inferior Court, and to dispose of the revision in the manner indicated under Section 401 of the Code. The revisional power of the High Court merely conserves the power of the High Court to see that justice is done in accordance with the recognized rules of criminal jurisprudence and that its subordinates Courts do not exceed the jurisdiction or abuse the power vested in them under the Code or to prevent abuse of the process of the inferior Criminal Courts or to prevent miscarriage of justice. The object of section 483 and the purpose behind conferring the revisional power under section 397 read with Section 401, upon the High Court is to invest continuous supervisory jurisdiction so as to prevent miscarriage of justice or to correct irregularity of the procedure or to meet out justice.The power of the High Court, therefore, is very wide. However, High Court must exercise such power sparingly and cautiouslyHowever, when the High Court notices that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is but the salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or to correct irregularities/incorrectness committed by inferior Criminal Court in its juridical process or illegality of sentence or order." (Emphasis added)

5. In this court's jurisdiction, the revisionary jurisdiction under the CPC. is guided by Section 362 of the Criminal Procedure Code which provides as follows:

"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."

6. Section 364 of the CPC provides for powers of the High Court on revision as follows:

"(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..."

7. Thus just like in the sister jurisdiction in India the equivalent provision in our law under the provisions of Sections 362 and 364 of the CPC, and indeed under the entire spectrum of Sections 362 to 367 of the CPC, therefore, are limited to preventing the abuse of the process or miscarriage of justice or to correct irregularities/incorrectness committed by inferior Criminal Court in its juridical process or illegality of sentence or order. The provisions are clear that the High Court in exercise of the power of revision, may call for the record which has been reported for orders, or which otherwise comes to its knowledge. The power of revision is limited to examination of 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.

8. This court has supervisory powers of the High Court as provided under article 165(7) which flow from, and have to be read in conjunction with the provisions of article 165(6). The two sub articles provide as follows:
 - (6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.
 - (7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice..”
9. The applicant has not indicated under what law he has moved the court but it can be inferred from his choice of the title to his application “Sentence Review”, he has come under Section 362 and 364 of the Criminal Procedure Code. Even were this court would invoke Article 165(6) and (7) of *the constitution*, the bottom line would be an examination of any incorrectness, illegality or action of whatever nature that impeded the fair administration of justice in the trial of the Applicant.
10. The grounds of being a first offender, having an ailing mother or being one who deserved an alternative of a fine were issues that were before the trial court. The court considered the matter and found a sentence of 5 years imprisonment suitable.
11. Section 339(1) of the Penal Code under which the Applicant was charged provides for a sentence of 5 years.
12. It is trite law that Sentencing is at the discretion of the trial court. In a review application any interference with the discretion of the trial court in sentencing would only arise if the sentence is illegal, incorrect or laced with impropriety. None of these has been demonstrated in this case.
13. Even where such challenge is placed before the court on an appeal, the principles under which the court can interfere with the exercise of discretion in sentencing come into play. These principles guiding interference with sentencing by the appellate Court were properly, in my view, set out in *S vs. Malgas* 2001 (1) SACR 469 (SCA) at para 12 where it was held that:

A Court exercising appellate jurisdiction cannot, in the absence of material misdirection by the trial court, approach the question of sentence as if it were the trial court and then substitute the sentence arrived at by it simply because it prefers it. To do so would be to usurp the sentencing discretion of the trial court...However, even in the absence of material misdirection, an appellate court may yet be justified in interfering with the sentence imposed by the trial court. It may do so when the disparity between the sentence of the trial court and the sentence which the appellate court would have imposed had it been the trial court is so marked that it can properly be described as “shocking”, “startling” or “disturbingly inappropriate”

14. Similarly, in *Mokela vs. The State* (135/11) [2011] ZASCA 166, the Supreme Court of South Africa held that:

It is well-established that sentencing remains pre-eminently within the discretion of the sentencing court. This salutary principle implies that the appeal court does not enjoy *carte blanche* to interfere with sentences which have been properly imposed by a sentencing court.



In my view, this includes the terms and conditions imposed by a sentencing court on how or when the sentence is to be served.”

15. There is no incorrectness, illegality or impropriety in the process, conviction and sentence of the Applicant. Ultimately, I must reach the finding that the application before the court lacks merit and is dismissed.

DATED SIGNED AND DELIVERED THIS 31ST DAY OF OCTOBER 2025.

A.K. NDUNG’U

JUDGE

