



REPUBLIC OF KENYA



KENYA LAW
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**Muriithi v Republic (Criminal Revision E228 of 2025)
[2025] KEHC 15292 (KLR) (29 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15292 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
CRIMINAL REVISION E228 OF 2025
RM MWONGO, J
OCTOBER 29, 2025**

BETWEEN

DISHON JOHN MUNYI MURIITHI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

The Charges

1. The applicant and 2 other people were charged with 11 counts which are narrowed down to conspiracy to defraud contrary to section 317 of the Penal Code and obtaining money by false pretences contrary to section 313 of the Penal Code. There were seven victims in total.
2. Upon arraignment, the applicant pleaded not guilty to the charges and a full hearing was conducted. He was acquitted of counts 1-6 but was convicted of counts 7-11 which is the charge of obtaining money under false pretences contrary to section 313 of the Penal Code, against 5 victims. He was sentenced to pay a fine of Kshs.300,000/= in count 7, Kshs.300,000/= in count 8, Kshs.500,000/= in count 9, Kshs.300,000/= in count 10 and Kshs.800,000/= in count 11. In default, he would suffer 2 years imprisonment on each of those 5 counts. The trial court ordered that the default sentences would run concurrently.

The Application

3. The applicant filed this application seeking that the sentences imposed by the trial court be reviewed. Prior to this application, the applicant had filed another revision application seeking that the default sentence be subjected to review and application of section 333(2) of the Criminal Procedure Code. The court determined that application through a ruling delivered on 09th April 2025 and included the 12 days he spent in custody pending the hearing, into his sentence.



4. He stated that he is satisfied with the court's findings on conviction but wanted the sentence to be reconsidered. He could not pay the fines and so he had remained in custody. He stated that he is the sole breadwinner of his family and they are suffering the longer he stays in custody. He urged the court to review the sentence by reducing the fine imposed and giving him a non-custodial sentence for the remaining period of the 2-year sentence.

Grounds of Opposition

5. The respondent filed grounds of opposition through which it stated that no wrong principles were applied by the trial court during sentencing to warrant revision of its orders. That the findings of the trial court on conviction and sentence are not illegal and the trial was lenient in its findings.

Parties' Submissions

6. The application was canvassed by way of written submissions.
7. In his submissions, the applicant revisited the evidence adduced during the trial and challenged it indicating how the trial court erred. On the issue of sentencing, he decried the trial court's findings in that regard and stated that they were in violation of the Judiciary Sentencing Policy Guidelines.
8. The respondent, on its part, relied on sections 362-366 of the Criminal Procedure Code and the case of Shadrack Kipkoech Kogo v Republic, Eldoret Crim. Appeal No.253 of 2003. It urged the court not to alter the sentences because leniency had already been exercised and there is no legal basis for reviewing the sentences.

Issue for Determination

9. The issue for determination is whether the sentences imposed by the trial court should be revised.

Analysis and Determination

10. The revisionary power of the High Court is drawn from Article 167(6) & (7) of *the Constitution* which provides:

“(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.”

11. Section 362 of the Criminal Procedure Code provides as follows on the High Court's supervisory jurisdiction:

“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.”

12. The applicant was convicted on counts 7-11 and he was sentenced to pay fines of Kshs.300,000/= in count 7, Kshs.300,000/= in count 8, Kshs.500,000/= in count 9, Kshs.300,000/= in count 10 and



Kshs.800,000/= in count 11, in default 2 years imprisonment on each of those 5 counts. The trial court ordered that the default sentences would run concurrently. The applicant states that he has been unable to raise the total sum of Kshs.2,200,000/= to pay the fines thus he is in custody.

13. Even though the applicant was granted leave to appeal out of time, he has not lodged any appeal. Issues of facts from the evidence adduced cannot be addressed through this application because the revision application did not include those issues. Moreover, the proper place to canvass them is within an appeal. Parties are bound by their pleadings and in this case, the applicant only sought sentence review and conceded on the conviction.
14. The 5 counts for which the applicant was convicted arise from section 313 of the Penal Code which provides for a sentence of 3 years imprisonment upon conviction. The section is as follows:

“ Any person who by any false pretence, and with intent to defraud, obtains from any other person anything capable of being stolen, or induces any other person to deliver to any person anything capable of being stolen, is guilty of a misdemeanour and is liable to imprisonment for three years.”

Conclusions and Disposition

15. The trial court exercised its discretion by imposing a fine with a default sentence for each count. The default sentence is not the full statutory maximum provided in the statute, as the trial court departed from it and instead imposed a 2 years’ imprisonment sentence. Therefore, there is no illegality or impropriety in the trial court’s decision on sentencing. Accordingly, there is no basis for reviewing the sentences imposed.
16. In light of the foregoing, the application is hereby dismissed in its entirety.
17. Orders accordingly.

DELIVERED, DATED AND SIGNED AT EMBU HIGH COURT THIS 29TH DAY OF OCTOBER, 2025.

R. MWONGO

JUDGE

Delivered in the presence of:

1. Applicant Present in Court
2. Ms. Nyika for the Respondent
3. Francis Munyao - Court Assistant

