



**Njenga v Republic (Miscellaneous Criminal Application E034 of 2024)  
[2025] KEHC 15435 (KLR) (31 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15435 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NANYUKI  
MISCELLANEOUS CRIMINAL APPLICATION E034 OF 2024  
AK NDUNG’U, J  
OCTOBER 31, 2025**

**BETWEEN**

**SAMSON MWANIKI NJENGA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant, Samson Mwaniki Njenga moved this court vide a Notice of Motion dated 8<sup>th</sup> November 2024. The Motion was premised on Article 50(2)(q), Article 165(6) of the Constitution, Section 327(2) of the CPC and Section (4)(1) as read with Section (4)(2) of the Probation of Offenders Act. He seeks orders which I note are a mix of the prayer for review and the grounds in support and I reproduce the same as hereunder;
  1. This court be pleased to review his sentence as per the above provisions of law and he be allowed to bring further mitigation in support of his application.
  2. That he pleaded guilty to the charges of house breaking and stealing and sentences to 5 years imprisonment and 2 years for the 2<sup>nd</sup> Count of handling (sic).
  3. That he does not wish to appeal against the court decision . He is satisfied with the sentence but begs the court to review the imposed sentence further downward.
2. The application is supported by his affidavit in which he deposed that he is a first offender with no previous record. That he was 24 years at the time of his arrest and undertaking a welding course at Nyandarua Technical and Training Institute. That he is an orphan and a bread winner in the family and he assists his brother who is mentally challenged.



3. The application is opposed vide Grounds of Opposition dated 17<sup>th</sup> June 2025 the gist of which is that the court's powers are divested under Section 364(5) and that the Applicant has not demonstrated that the conviction and sentence by the trial Magistrate was incorrect, illegal or improper.
4. The Applicant made brief oral submissions in which he stated that when he stole, his brother was sick. He does not have Parents. Sh. 2000 was needed. He stole the TV.
5. For the Respondent, it is submitted that the application does not meet the legal threshold for review under Section 362 CPC. Reliance was placed on the cases of Republic v John Wambua Munyao [2018]eKLR and Vincent Echesa Okote v Republic[2019]eKLR. It is submitted that the sentences were provided in Section 304 and 322(2) of the Penal Code and the trial magistrate exercised jurisdiction in sentencing and no basis is laid for this court's interference with the sentence.
4. The jurisdiction of the High court is provided for under Article 165(3) of the *Constitution* and includes unlimited original jurisdiction in criminal and civil matters; jurisdiction to enforce bill of rights; appellate jurisdiction; interpretative jurisdiction; and any other jurisdiction, original or appellate, conferred on it by legislation. The High court further has supervisory jurisdiction over subordinate courts donated by Article 165(6) of the *Constitution* which states that;
  - (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.
5. There is a further jurisdiction of this court to review orders in a criminal trial under sections 362 and 364 of the Criminal Procedure Code.
6. The power of criminal review (called revision) of this court is provided for in sections 362 and 364 of the Criminal Procedure Code and extends only to –
 

“...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.”
7. The details of those powers of the High Court in revision are set out in section 364.
8. As per Article 165(6) and the above section, the High Court can only review or exercise revisionary powers over a subordinate court.
9. From the foregoing, this court can only review the judgment of a subordinate court under the jurisdiction provided by sections 362 and 364 of the Criminal Procedure Code and the supervisory powers over subordinate court's donated by Article 165(6) of the *Constitution*. I must add for good measure that such review would not extend to review of legal sentences arrived at through proper application of existing law and procedure.
10. In the present application the sentencing procedure adopted by the trial court had no fault. The State was accorded the opportunity to provide the records of the Applicant. He had 4 previous criminal convictions which he acknowledged. He was given an opportunity to mitigate and he did so extensively. The court considered the facts before it and proceeded to sentence the Applicant to 5 years imprisonment on the first limb of the offence which was less than the 7 years provided in law and 2 years on the second limb.



11. The Applicant has misled the court that he was sentenced to 2 years for handling stolen property. The record shows otherwise and the law is that the alternative charge becomes inoperative once there is a conviction on the main count.
12. The sentence meted out on the Applicant was legal and deserved. I hasten to add that it is not for this court to determine what was the right sentence. That was at the discretion of the trial court and the powers of this court to interfere are rather limited.
13. The application has no merit and is dismissed.

**DATED SIGNED AND DELIVERED VIRTUALLY THIS 31<sup>ST</sup> DAY OF OCTOBER 2025.**

**A.K.NDUNG'U**

**JUDGE**

