



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA COUNTY

COURT NAME: MOMBASA HIGH COURT

CASE NUMBER: HCCRREV/E204/2025

ROBERT OMBEO NYABUTO VS THE REPUBLIC

RULING

Introduction

1. The Applicant was charged with the offence of stealing goods in transit contrary to section 279(c) of the penal code. He was convicted and sentenced to 2 years imprisonment.
2. The applicant subsequently filed a revision under section 362 of the Criminal Procedure Code. He does not dispute the conviction but only the sentence. His mitigation is that he has reformed and seeks the Court to place him on probation for the remaining period of the sentence
3. The Court's powers of revision are set under the provisions of Sections 362 through to 366 of the Criminal Procedure Code; the scope of this court's revisionary powers is that it can call for and examine the record of criminal proceedings of a subordinate court so as to satisfy itself as to the propriety and legality of the decision and that it has been made according to the law; the applicable section for revision in this instance is found at Section 364 which reads 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.

(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 defense Provided that this subsection shall not apply to any order made where a subordinate court has failed pass a



sentence which was required to pass under the written law creating the offence concerned.

(3) Wheree 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 wwhich 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 insistence of the party who could have appealed.

4. Section 279(c) of the Penal code provides for a maximum sentence of 14 years in the event of a conviction. The applicant herein was sentenced to 2 years imprisonment. Therefore, that the sentence passed was neither harsh nor excessive.

5. It should be noted that the applicant did not file an appeal. The applicant had a right to appeal but chose not to exercise it. Therefore, this application fails by dint of section 364(5) of the criminal procedure code as stated above. In the case of **Gedion Nyamari Mose v Republic [2020]** the Court rightly held as follows whilst dismissing a similar applicant for revision;

I have considered the application carefully and I am of the view that firstly it is incompetent and not properly before this court and secondly that it has no merit. Upon conviction and sentence the accused Person has a right of appeal. That right is enshrined in Article 50 (2) (q) of the Constitution which states: - "

(2) Every accused person has the right to a fair trial, which includes the right: -

(q) If convicted, to appeal to, or apply for review by, a higher court as prescribed by law."

That right is given expression in section 347 (1) (a) of the Criminal Procedure Code which states: -

"347 (1) Save as in this part provided

- 1. a person convicted on a trial held by a subordinate court of the first or second class may appeal to the High Court. convictions and sentences for sexual offences are therefore appealable as of right. It is clear from Section 347 (1) (a) of the criminal procedure code that a person who is convicted of an offence and who is aggrieved is expected to exercise that right of appeal first to the high court and then to the court of appeal as provided under the law. A person who fails to exercise that right cannot come to court for revision of a sentence lawfully passed by a trial court. Indeed, Section 364 (5) of the Criminal Procedure Code expressly prohibits that and states: -*

(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.

The applicant has attached a certificate to the effect that he has not filed any appeal in respect to his case. He is therefore by virtue of section 354 (5) of the Criminal Procedure Code prevented from filling this application. For that reason, his application is not properly before this court and is



incompetent.

6. The court has not found any reason to revisit the sentence. The application is dismissed.

Dated, signed and delivered in Open Court/online through MS TEAMS,

this ...23rd...day of ...October...2025

HON. LADY JUSTICE W. K. MICHENI

JUDGE

In the presence of: -

The applicant

Mr Ngiri for the respondent

Bebora court assistant

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HON. LADY JUSTICE W. K. MICHENI

JUDGE

SIGNED BY/FOR:
HON. LADY JUSTICE WENDY MICHENI



THE JUDICIARY OF KENYA.
MOMBASA HIGH COURT
HIGH COURT CRIMINAL
DATE: 2025-10-27 23:21:25

