



**Dinini v Republic (Criminal Revision E124 of 2024)
[2025] KEHC 16009 (KLR) (5 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16009 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CRIMINAL REVISION E124 OF 2024
NIO ADAGI, J
NOVEMBER 5, 2025**

BETWEEN

MUSHIRA DININI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant, MUSHIRA DININI filed a Chamber Summons application dated 30th August 2024 and seeks five prayers as follows:
 - i. That: This Hon. Court be pleased to make determination that it is within the criminal justice procedures for a convicted prisoner to apply for a revision of a sentence as per the provisions of section 364 of the CPC.
 - ii. That, I was arrested and charged with an offence of stealing stock contrary to Section 278 PC in criminal case no. E 1398 of 2023 before CMS Mavoko.
 - iii. That, I was sentenced to 6 years custodial sentence judgement delivered on 29 05 2024 before Hon. Kandie-RM.
 - iv. That: This Hon. Court be pleased to make determination that it is also within the applicant's constitutional right under Article 50 of *akn ke act 2010 constitution the Constitution* to be heard in a court of law through an application.
 - v. That, I the applicant wishes to be present during the hearing of my petition.
2. The application is supported by an affidavit sworn by the Applicant in which he contends that he was convicted for the offence of Stealing stock contrary to Section 278 of the Penal Code and sentenced to 6 years' imprisonment. He also contends that he is most remorseful for the offence he committed and therefore prays for court to review the sentence he is currently serving downwards. He prayed



that the court invokes the provision of Sections 364 of the CPC CAP 75 laws of Kenya and reviews downwards the sentence of 6 years that was imposed on him by the trial court. He asks the court to further invoke the provisions of Article 50 (2) (p) of *akn ke act 2010 constitution the constitution* where leniency of a sentence is advocated and reviews the sentence imposed to the applicant by the trial court. The Applicant further asks the court to tender mercy and justice and be able to review the sentence downward while invoking the principle of natural justice.

3. The Applicant relied on the case of SCOTT-CROSSLEY 2008(1) SACR 223 (SCA) at paragraph 35 that;

”It is true that it is in the interest of justice that crime should be punished. However, the punishment that is excessive serves neither the interest of justice nor those of the society”

4. In his submissions dated 28th July 2025, the Applicant contents that he was the sole bread winner with school going children and his prolonged stay in prison will render them to suffer irreparably. It is the Applicant’s prayer that this court does consider their plight because the relief that he is seeking before this court will also be a relief to them. The Applicant has cited Article 53(2) of *akn ke act 2010 constitution the Constitution* on the best interest of a child being paramount to every matter concerning a child. The Applicant submitted that for the period he has been in custody, he decided firstly to make peace with himself and with God. So far, he has accepted himself, He has come to realization that crime is bad and the wages of crime is suffering and thus he has undergone spiritual rebirth and thus pray for a second chance.
5. He now urges the court to review his sentence downwards.
6. Ms. Agatha Abang, learned Prosecution Counsel did oppose the application vide the written submissions dated 24th July 2025. She submitted that in exercising its supervisory jurisdiction, this Court has no powers to alter a conviction in a decided case in the lower court trial. The court is invited to handle any issue of legality, correctness or propriety of the court's orders. This honourable court has no jurisdiction to act as an appellate court in a case of review, as this case is in the Applicant's application.
7. That the circumstances of the case are that the Applicant and his co-accused were left in charge of herding and grazing the complainant’s herd of cattle. The witnesses testified that they count the animals twice per day. It was noticed that 20 cows were missing and they went missing after the count was done. In his defence the Applicant denied the whole event stating that he did not steal the cows.
8. Section 278 of the Penal Code under which the Appellant was charged provides:-

“If the thing stolen is any of the following things, That is to say, a horse, mare, gelding, ass, mule, camel, ostrich, bull, cow, ox, ram, ewe, whether, goat or pig, or the young thereof the offender is liable to imprisonment for a period not exceeding fourteen years.”
9. The Respondent submitted that penalty under the Act upon conviction is imprisonment for a period not exceeding fourteen years. The Applicant was sentenced to six years imprisonment. The trial court sentence was well within the law.
10. She submitted that the trial court found that the prosecution proved its case beyond reasonable doubt and convicted the Applicant and sentenced him accordingly.
11. The Applicant has invoked Section 364 of the Criminal Procedure Code which provide as follows:-

364.



- (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 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.
 - (3) 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.
12. A court in revision is not concerned with the merits of the decision of the court but rather on the impropriety, mistake, illegality of the order, sentence or judgment.
 13. The basis of the Applicant's application is spelt out under prayer sought as order (i) of his application which provides: "This Hon. Court be pleased to make determination that it is within the criminal justice procedures for a convicted prisoner to apply for a revision of a sentence as per the provisions of section 364 of the CPC"
 14. Ordinarily, such a challenge to the sentence should be made by way of an appeal. Section 364 (5) of the Criminal Procedure Code is clear on this where it provides:-
 - “(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.”
 15. This court's powers of revision are limited to satisfying itself as to the correctness, legality or propriety of any findings, sentence, or order recorded or passed and as to the regularity of any proceeding of any such subordinate court and in exercising supervisory jurisdiction under Article 165(6) of *akn ke act 2010 constitution the Constitution* the court does not exercise appellate jurisdiction and therefore cannot review or re-weigh evidence upon which the determination of the lower court was based and can only upset an order which it considers erroneous, without jurisdiction and constitutes gross violation of the fair administration of justice. (See *Chris Phillip Obure v Republic* [2020] eKLR)



16. I have considered the learned trial magistrates ruling on sentence. The learned trial magistrate stated:-

“I have considered the mitigation by the accused and pre-sentence report. The Accused is a first offender and remorseful. The maximum sentence for such an offence is 14 years and the value of the property. I shall sentence the Accused to serve 6 years to commence from 20 11 2023 when he was charged in court. Note that he didn't manage to raise the bond terms. 14 days Right of Appeal

17. I have considered the statement by the learned trial magistrate. I find that the court took into account of the period spent in custody during the pendency of the trial There was no error, mistake, impropriety or illegality in the order of sentence passed by Hon. S. Kandie, the learned trial magistrate. Accordingly, the application lacks in merit and is dismissed in its entirety.

18. Orders Accordingly

19. This Revision file is closed.

RULING WRITTEN, DATED & SIGNED AT MACHAKOS THIS THIS 5TH NOVEMBER 2025

NOEL I. ADAGI

JUDGE

Delivered Virtually On Teams At Machakos This 5th November 2025

n the presence of:

