



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kimutai alias Cosmas Ochieng v Republic (Revision Case E076 of 2025)  
[2025] KEHC 17168 (KLR) (20 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17168 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
REVISION CASE E076 OF 2025  
A MABEYA, J  
NOVEMBER 20, 2025**

**BETWEEN**

**BRIAN KIBET KIMUTAI ALIAS COSMAS OCHIENG ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Brian Kibet Kimutai alias Cosmas Ochieng was on 28 9 2022 arraigned before the Maseno Senior Resident Magistrates Court with the offence of impersonating a Police Officer contrary to section 101(1) (b) of the *akn ke act 2011 11A National Police Service Act* No. 11A of 2011.
2. The particulars of the charge were that on the 27<sup>th</sup> day of September, 2022 at Otonglo Market in Kisumu West Sub-County within Kisumu County, with intent to defraud, he falsely presented himself to be a police officer at Kodiaga Medium Prison and a DCI officer attached to Central Police Station.
3. He pleaded guilty to the charge and was convicted and sentenced to 9 years imprisonment. A presentence Report dated 5 10 2022 was very negative of him.
4. Against this background, on 12 6 2025, he took out a Motion on Notice seeking the review of his sentence which he termed as harsh and un-proportionate. That he was entitled to a minimum possible sentence under Article 25(c) of *akn ke act 2010 constitution the Constitution*. He also claimed that he had been discriminated upon. He prayed that his sentence be reviewed.
5. He filed his submissions dated 10 9 2025 which I have carefully considered. Ms. Kagali, Prosecution Counsel conceded and submitted that section 105(b) of the Penal Code provides for a sentence of 3 years. She therefore prayed that the sentence be reduced accordingly.



6. The Court has considered the entire record and the submissions on record. This Court’s jurisdiction to review the subordinate’s decision arises under sections 362 and 364 of the Criminal Procedure Code which provides: -

“362. 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.

And

364. 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. The applicant was charged under section 101(1)(b) of the National Police Act No. 11A of 2011 which provides: -

“1) A person other than a Police Officer who, without the written authority of the inspector General.

a)...

b) in any way pretends to be a Police officer for any purpose which he would not by law be entitled to do of his own authority, commits an offence and shall be liable on conviction to a fine not exceeding one million shillings or to a term of imprisonment not exceeding ten years, or to both.”

8. It is clear from the above provision that the operative part that creates the offence is pretending to be a Police officer “for any purpose which he would not by law be entitled to do of his own authority.” This means that for one to commit the offence, he must impersonate a police officer and pretend to do that which it is only a Police Officer is permitted to do under the *akn ke act 2011 11A National Police Service Act*. In this regard, the words, ‘...for any purpose...’ must be read to refer to the objects, functions, obligations or powers of a police officer under the Act as set out in Part VII sections 45 to 72 thereof. One must set out to do any of those things while pretending to be a police officer.

9. In the present case, the particulars of the charge did not disclose any act on the part of the applicant that disclosed an offence under the *akn ke act 2011 11A National Police Service Act*. It is not part of the functions, obligations or powers of a police officer to eat in a hotel for free or incur bills in a bar for free. That is not permitted under the Act for any police officer. It cannot be said that the accused pretended to be a police officer in order to eat and drink for free.

10. The view this Court takes is that, the offence that was disclosed to have been committed was obtaining by false pretences. He ordered food and drinks on the pretence that he would settle the bill which he



did not. It cannot be said that, if a police officer did what the accused did the police officer would not have committed an offence.

11. Accordingly, although the applicant pleaded guilty, he did so to particulars that did not disclose any offence against him. It was a defective charge. The proceedings were irregular and cannot stand. One cannot pretend to be a Police officer under section 101(1) (b) of the *akn ke act 2011 11A National Police Service Act* in order to consume food and drinks of others for free. That would be obtaining by false pretences.
12. In view of the foregoing, I exercise the powers under section 362 and 364 of the Criminal Procedure Code and revise the proceedings of the lower court in Maseno MCCR No. E352 of 2022 – Republic vs Brian K. Kimutai alias Cosmas Ochieng. I quash the conviction and set aside the sentence. The applicant is to be released forthwith and set at liberty unless otherwise lawfully held.

It is so ordered.

**DATED and DELIVERED AT KISUMU THIS 20<sup>TH</sup> DAY OF NOVEMBER, 2025 .**

**A. MABEYA, FCI Arb**

**JUDGE**

