



**Mohamed v Republic (Miscellaneous Commercial Application  
E035 of 2025) [2025] KEHC 17208 (KLR) (25 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17208 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA  
MISCELLANEOUS COMMERCIAL APPLICATION E035 OF 2025**

**JN ONYIEGO, J  
NOVEMBER 25, 2025**

**BETWEEN**

**HARET YUSSUF MOHAMED ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being a revision application against the sentence of Hon. M.Nyagah (SRM)  
delivered on 30-06-2022 in criminal case number E193 of 2022 Wajir PM's Court)*

**RULING**

1. The applicant herein was on 12<sup>th</sup> May 2022 charged with the offence of House breaking contrary to Section 304 (1)(b) of the penal code. Particulars were that on 23-03-2022 at Wajir township location, in wajir East sub-county within Wajir County, he broke and entered the building used as dwelling house by Alice Makena Muriungi and stole a mobile phone make Techno 402 valued at 2000 and cash Kshs 17,296/= the property of Alice Makena Muriungi.
2. He was further charged with an alternative count of Handling stolen property contrary to Section 322(1)(2) of the penal code. Particulars were that on 10-5-2022 at Wajir township location, in Wajir East Sub-county within Wajir County, otherwise than in the course of stealing, he dishonestly retained one mobile phone make techno valued at kshs 2000/= the property of Alice Makena Muriungi knowing or having reasons to believe that it was stolen property.
3. Prosecution lined up a total of 6 witnesses to prove its case and via a judgment delivered on 23.06.2022, the appellant was found guilty of the main offence and consequently convicted and thereafter sentenced to 4 years imprisonment in respect of the 1<sup>st</sup> limb and 3 years imprisonment in respect of the 2<sup>nd</sup> limb. Sentences were to run concurrently.



4. Being dissatisfied, he has now moved to this court seeking review of his sentence on grounds that; he is a first offender; he is remorseful; he has no pending appeal; he did not give proper mitigation during sentencing; he is a father of three; he is just 25 years old and that he is praying for leniency.
5. Basically, the applicant is seeking revision of his sentence to enable him get out of prison. In response, the respondent opposed the application on grounds that the sentence is legal and appropriate.
6. I have considered the application herein and the response thereof. The law governing revision in a criminal case is captured under Section 362 and 364 of the CPC. Section 362 and 364 provides as follows;

“362. Power of High Court to call for records

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.

364. Powers of High Court on revision

- (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.
  - (c) in proceedings under section 203 or 296(2) of the Panel Code (Cap. 63), the *Prevention of Terrorism Act* (Cap. 59B), the *Narcotic Drugs and Psychotropic Substances (Control) Act* (Cap. 245), the Prevention of Organized Crimes Act (Cap. 59), the *Proceeds of Crime and Anti-Money Laundering Act* (Cap. 59A), the *Sexual Offences Act* (Cap. 63A) and the *Counter-Trafficking in Persons Act* (Cap. 61), where the subordinate court has granted bail to an accused person, and the Director of Public Prosecution has indicated his intention to apply for review of the order of the court, the order of the subordinate court may be stayed for a period not exceeding fourteen days pending the filing of the application for review.



- (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.

7. It is clear from the above provisions that an application for review of sentence can be entertained only for purposes of the court satisfying itself as to the correctness, legality or propriety of the proceedings. Section 364(5) of the CPC is emphatic that no application for revision should be entertained where an appeal lies from a sentence or order. This position was espoused in Criminal Revision number 194 of 2023 Kisii High court in the case of Barongo Siany Atembe vs Republic.
8. From the record, the court is merely being asked to exercise mercy on the applicant. He is not appealing against sentence nor conviction. It is trite law that sentencing is at the discretion of the court and an appellate court can only interfere if the same is illegal, harsh or excessive or the trial court failed to take into account relevant factors or considered wrong legal principles.
9. The above position was stated succinctly by the Court of Appeal for East Africa in the case of OGOLA s/o OWOURA VS REGINUM (1954) 21 270 as follows:-

“The principles upon which an Appellate Court will act in exercising its jurisdiction to review sentences are firmly established. The Court does not alter a sentence on the mere ground that if the members of the Court had been trying the appellant they might have passed a somewhat different sentence and it will not ordinarily interfere with the discretion exercised by a trial Judge unless, as was said in *James V R.*, (1950) 18 E.A.C.A 147:

“It is evident that the Judge has acted upon some wrong principle or overlooked some material factor.”

To this we would also add a third criterion, namely, that the sentence is manifestly excessive in view of the circumstances of the case: *R. V Sher shewky*, (1912) C.C.A. 28 T.L.R. 364.”

10. Taking into account the seriousness of the offence committed, the sentence imposed was not excessive nor harsh. The trial court properly exercised its discretion. In a nut shell, I do not find any good ground to interfere with the sentence. Accordingly, the application is dismissed.



DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 25<sup>TH</sup> DAY OF NOVEMBER 2025

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**J. N. ONYIEGO**

**JUDGE**

