

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

MISC. CRIMINAL APPLICATION NO. E044 OF 2025

SALIM ABDI ADOW.....

.....APPLICANT

VERSUS

REPUBLIC.....

.....RESPONDENT

(Being revision application against the sentence of Hon. R. Aganyo (PM) dated 8th July 2025 in Wajir PM's Court Criminal Case No. E024 of 2025).

RULING

1. The applicant was charged with the offence of being found in possession of cannabis sativa ((bhang) contrary to Section 3(1) as read with Section 3 (2) of the Narcotic drugs and psychotropic substances Amendment Act of 2022. Particulars states that on 20th day of January 2025, at Baraza park location, Wajir east sub-county within Wajir County, he was found in possession of cannabis sativa (bhang) to wit twenty- seven (27) Sachets of street value kshs 2,700 and not prepared in medicinal form.
2. Having denied the charge, the matter proceeded to full trial. At the conclusion of the hearing, he was convicted and subsequently sentenced to serve 3 years.

3. He has now moved to this court vide an undated application seeking review of sentence on grounds that he pleaded guilty; he is remorseful; he has since reformed; he did not give proper mitigation and that he has three children who depend on him.
4. In response, the prosecution opposed the application asserting that the sentence is legal and appropriate.
5. 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.**
- (1) 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.

6. 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**.

7. The court is being asked for leniency and mercy. The applicant is not claiming any wrong doing or error committed by the trial court. It is trite that sentencing is at the discretion of the trial court. There is no ground for this court to exercise revision of sentence. In my view the applicant is trying luck from the court. I do agree with the prosecution that the application is devoid of merit hence dismissed.

Dated, signed and delivered in open court this 15th day of
December, 2025

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J.N.ONYIEGO
JUDGE