

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISUMU
MISCELLANEOUS CRIMINAL APPLICATION NO. E179 of
2025

CYNTHIA AKINYI
ONYANGO.....APPLICANT

VERSUS

REPUBLIC.....
....RESPONDENT

RULING

1. The Applicant herein, vide the Notice of Motion dated 22nd September, 2025 seeks an order for the review of her sentence, so that she be placed on a probation or community service orders sentence.

2. The grounds upon which the Applicant bases her application are that she expresses remorse and that she has a young child who fully depends on her and that she supports her mother in procuring medication.

3. In her supporting affidavit, the Applicant deposes that she was convicted and sentenced to serve 18 months' imprisonment for the offence of stealing from a dwelling house, with an alternative charge of handling stolen goods. She states that she does not challenge either the conviction or the sentence imposed, but respectfully seeks consideration for a non-

custodial sentence in the form of probation or a Community Service Order.

4. The Applicant avers that she is remorseful for the offence committed and sincerely regrets her actions and prays that the Court considers her a first offender. She further states that she is the sole breadwinner of her family and has a young child who is entirely dependent on her. She deposes that her child is currently under the care of her elderly and sick mother, who is weak and unable to adequately provide for the child's basic needs.
5. The Applicant adds that she is responsible for purchasing medication and catering for the medical needs of her ailing mother and that she is 23 years old and that her education was interrupted after she gave birth while still in school, compelling her to drop out in order to seek employment and support her child due to her disadvantaged background.
6. In her further deposition, the Applicant expresses concern that serving the custodial sentence will deprive her of the most productive years of her life and limit her ability to support her family and contribute positively to society. She further deposes that since her arrest and conviction, she has reflected on her conduct, learned valuable lessons and resolved not to engage in criminal activity in the future. She therefore humbly

prays that the Court exercises its discretion in her favour and grants her a non-custodial sentence.

7. The Applicant's application is opposed and to that end the State filed a replying affidavit sworn on 30th January, 2026 by **Ms. Mercy Muema**, Prosecution Counsel.
8. In her replying affidavit, **Ms. Muema** deposes that the Applicant was convicted of the offence of stealing from a dwelling house and sentenced in accordance with the law, noting that the offence attracts a maximum penalty of seven years' imprisonment.
9. **Ms. Muema** avers that the sentence imposed was lawful and fell within the prescribed statutory limits and that there was no illegality, procedural impropriety or manifest error to justify interference by way of review. According to her, the trial court took into account all relevant considerations, including the Applicant's plea, mitigation, remorse, personal circumstances and the nature and gravity of the offence before passing sentence.
10. **Ms. Muema** further contends that a plea of guilty, expressions of remorse and rehabilitation while in custody are ordinary mitigating factors that would have been considered at sentencing and do not constitute sufficient grounds for post-conviction sentence review. She relies on a High Court

decision in ***Pauline Wambui Gichimu v Republic [2025] KEHC 17268 (KLR)***, where a similar application for revision seeking a non-custodial sentence was dismissed on the basis that the sentence imposed was lawful and properly considered.

11. The learned Prosecution Counsel emphasizes the seriousness of the offence, particularly as it involves intrusion into the sanctity and security of a dwelling house, thereby causing distress to victims and warranting a deterrent custodial sentence. In her view, the punishment imposed appropriately reflects the gravity of the offence and serves the broader interests of justice and public safety.

12. Finally, **Ms. Muema** maintains that if the Applicant is dissatisfied with the sentence, the proper recourse lies in an appeal rather than a sentence review and urges the Court to dismiss the application for lack of merit in order to uphold the integrity and finality of the criminal justice process.

13. I have carefully considered the Notice of Motion, the supporting affidavit of the Applicant, the replying affidavit of the State and the submissions implicit therein. The following issues arise for determination:

- a. Whether this Court has jurisdiction to review or interfere with the sentence imposed by the trial court in the circumstances presented.

- b. Whether the grounds advanced by the Applicant warrant interference with the sentence, even assuming jurisdiction existed.
14. The first issue for determination is whether this Court has jurisdiction to review or interfere with the sentence imposed by the trial court in the circumstances presented.
15. The Applicant does not challenge the conviction nor allege any illegality or procedural impropriety in the sentencing process. Instead, she seeks that the custodial term of eighteen (18) months' imprisonment be substituted with a probation or community service order on account of her personal circumstances.
16. The High Court's revisional jurisdiction in criminal matters is derived from *Sections 362 and 364 of the Criminal Procedure Code*. Under these provisions, this Court may only call for and examine the record of proceedings before a subordinate court to satisfy itself as to the correctness, legality or propriety of any finding, sentence or order passed and the regularity of the proceedings. A fundamental limitation is that revision is not a substitute for appeal and cannot be used to re-weigh factors that were properly considered at sentencing absent an illegality, impropriety or jurisdictional error.

17. In **Moraa v Republic (Criminal Revision 236 of 2023) [2023] KEHC 26457 (KLR)**, the High Court emphasized that its revisional jurisdiction is confined to ensuring legality and propriety of subordinate court decisions and cannot be used to substitute its own sentencing judgment merely because an appeal was available and not taken.
18. Similarly, in **Mwangi v Republic (Criminal Revision E89 of 2022) [2023] KEHC 1841 (KLR)** the Court held that it lacked jurisdiction to entertain a revision application where the applicant had a right of appeal but chose not to exercise it, absent an allegation of illegality.
19. More recently, in **Kisule v Republic (Criminal Revision E110 of 2024) [2025] KEHC 14313 (KLR)** the Court reiterated that a prayer to review and substitute a lawful sentence with a more lenient one was misconceived and amounted to an appeal in disguise, which this Court could not entertain under its revisionary jurisdiction.
20. The law is accordingly settled that this Court cannot engage in post-conviction sentencing review to re-assess mitigating factors, such as expressions of remorse or personal hardships, unless the sentence is illegal, manifestly excessive or founded on wrong principles. No such defects have been alleged or demonstrated in this application.

21. In the circumstances, this Court lacks jurisdiction to revise or otherwise substitute the sentence imposed merely because the Applicant now seeks a non-custodial outcome. The proper avenue for such relief is by way of an appeal, not through revision before this Court.
22. The second issue for determination is whether the grounds advanced by the Applicant warrant interference with the sentence, even assuming jurisdiction existed.
23. The grounds articulated by the Applicant, namely remorse, personal hardship and family responsibilities, are ordinary mitigating factors that would have been considered at the original sentencing stage. Regret and hardship, without more, do not constitute exceptional circumstances warranting interference with a lawful sentence on revision.
24. The sentencing court's discretion encompasses the weighing of mitigating and aggravating factors. In the absence of an allegation of illegality, procedural error or manifest excessiveness, such discretion is not subject to re-evaluation on revision.
25. The offence for which the Applicant was convicted – stealing from a dwelling house – carries a statutory maximum sentence of seven (7) years' imprisonment. The custodial term of eighteen months imposed was lawful and within the statutory

limits. There is no basis to disturb it in the present proceedings.

26. In the result, I find that this Court lacks jurisdiction to review or interfere with the sentence imposed by the Chief Magistrate's Court in the manner sought by the Applicant, as no illegality, impropriety or irregularity has been demonstrated.

27. Accordingly, the Notice of Motion dated 22nd September, 2025 is hereby dismissed for want of jurisdiction.

28. It is so ordered.

29. This file is closed.

DELIVERED (virtually) DATED and SIGNED this 17th day of February, 2026.

JOE M. OMIDO

JUDGE

APPLICANT: Present, virtually.

RESPONDENT: **Ms. Muema.**

COURT ASSISTANTS: **Mr. Ngoge & Mr. Juma.**