

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUSIA
CRIMINAL REVISION NO. E021 OF 2025

CHARLES NYAKANGO MONGARE.....APPLICANT
VERSUS
REPUBLIC.....RESPONDENT

RULING

1. On 22nd December 2025, I delivered a ruling wherein I directed the Deputy Registrar to call for the trial court records, to enable me determine the revision herein.
2. The application, dated 29th July 2025, sought bail pending revision and, as alternative, stay of execution of sentence. It did not seek revision, revision is sought in a letter, annexed to the affidavit supporting the application. That letter, dated 29th July 2025, is addressed to the Judge, but it was not delivered directly and separately to the Judge, but appeared as a mere annexure to the supporting affidavit.
3. Be that as it may. The letter seeks revision on 3 grounds set out on the face of the letter. One, that the charge sheet was defective, as it turned on axles, yet the matter of axles did not affect weight. Two, that the convict was charged despite existence of a vin plate. Three, sentence was harsh.
4. Revision proceedings are pegged on sections 362 and 364 of the Criminal Procedure Code, Cap 75, Laws of Kenya. Article 165(6)(7) of the Constitution is also relevant. Both sets of provisions vest the High Court with powers over subordinate courts. Whereas the constitutional provisions confer what it refers to as supervisory jurisdiction, the Criminal Procedure Code confers a revisional jurisdiction. The constitutional provisions are general, while the provisions in the Criminal Procedure Code are limited to

criminal proceedings. The two sets of provisions, however, cover the same subject, conferment, on the High Court, of jurisdiction to oversee how the subordinate court discharges its mandate.

5. Under the Constitution, the power is to look at the record of the trial court, and to give directions on the way forward, with an eye on effective administration of justice. The Criminal Procedure Code provisions focus on legality, propriety, correctness and regularity of proceedings and orders. The 2 provisions are clearly on matters of procedure, and not substance. Legality would largely turn on jurisdiction, in terms of whether the matter is before the proper court, whether the court before which the matter is placed has been vested with power to determine it, whether that court has the legal competence to handle it, whether it is a matter that ought to be placed before it.
6. Jurisdiction is, usually, a substantive matter, but also touching on process, with respect to who has power to do what. However, territorial jurisdiction is purely administrative, and, therefore, purely procedural. Propriety and correctness are related. They are about jurisdiction and procedure, whether an order was proper and correct, not in terms of substance, but in view of the procedural arrangements. Regularity is also about process, whether the processes, indulged in to reach the outcome, followed the laid down procedure.
7. Supervisory jurisdiction, which is also exercised under Judicial Review, and revisional jurisdiction are distinguished from appeals, which turn largely on the substance of the impugned decision. Procedure can be subsumed in appeal, and an appeal can be on both substance and procedure. However, supervisory jurisdiction and revisional jurisdiction are limited to procedure. It is for that reason that, under section 364(5) of the Criminal Procedure Code,

where 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 instance of the party who could have appealed.”

8. There are 2 principal issues. One, on the substance of the charge sheet, and two, on the propriety of the sentence.
9. The issue raised about the charge sheet should go into substance, not process. The convict complains that the 3 axles are allowed under the law, under which he was charged, and, in any case, the third axle did not affect weight. Those are matters of substance, not process. They are issues that the trial court did not have to delve into at arraignment.
10. Secondly, the drawing of the charge is not the duty of the court. The charge is drafted by the parties, particularly the prosecution, and filed by them. The trial court conducts the trial based on the charge. Of course, the court ought to peruse the charge, and assess it, to determine whether or not it is valid or defective. However, failure or omission, on the part of the court, to do so, cannot be taken against the trial court. The court is not responsible for any defects in the charge. Issues about substantive defects in the charge cannot be raised as an issue for revision of court orders, as it is not a procedural issue, for it would be a matter of appeal.
11. Thirdly, the revision is about how the court handled the matter. The convict was presented in court, the charges were read and explained to him, and he pleaded to them. The court convicted him, according to his plea of guilty, and proceeded to sentence him. Revision, in this instance, can only target how the court handled the plea-taking exercise, and not the substance of the charge. The role of the court did not involve crafting or drafting the charge, but the exercise of reading the charges, explaining them, and convicting, upon plea of guilty being entered, or recoding a plea of not

guilty, upon such plea being made, and allocating a date for hearing and considering whether to admit the accused to bond. The trial court did not act improperly, or incorrectly, or illegally, or irregularly, for it did all what was expected or required of it.

12. Imposition of sentence is both procedural and substantive. It can be targeted for revision purposes, where there are irregularities in the handling of the sentencing process. Where the sentence imposed is illegal, or improper, or irregular, the order on sentence can be revised. The sentences, for the offences created under section 20, of the East African Community Vehicle Loads Control Act, No. 1 of 2016, under which the convict was charged, is a fine not exceeding USD 15,000.00, or imprisonment not exceeding 3 years, or both. USD 15,000.00 is equivalent to Kshs. 1,933,500.00, at current exchange rates. Looked at, from that context, a fine of Kshs. 500,000.00 would not be out of range.
13. It ought to be emphasised that the law, under which the convict was charged, is meant to protect the road network of East Africa, through the way heavy loads are managed by transporters on transit. The expense of improving or upgrading roads, to tarmac or concrete, is enormous, yet such roads can be destroyed by the simple act of overloading or the conveying of heavy loads unevenly. That law is meant to deter drivers and transporters, who damage roads, by not adhering to the relevant law on load management. The investment, into long-lasting road networks, is heavy, and anyone, flouting the law meant to protect the said roads, or contributing to damaging them, expose themselves to the hefty penalties prescribed.
14. In assessing the quantum of the fine to impose, in the context of the offence charged herein, the trial court ought not so much look into the income of the offender, but the extent of the damage he causes or is likely to cause, in

monetary terms, by their act. It would not be about the driver, and whether he can afford to raise the fine, which ought to be assessed commensurate to the offence charged, but about the road damaged, or exposed to damage, by his acts. The sentence imposed was, in the circumstances, not disproportionate.

15. Having carefully reflected on the proceedings, that were conducted, in Busia MCTRC No. E441 of 2025, on 27th July 2025, I find that the same were not illegal, incorrect, irregular or improper. Consequently, I hereby decline to revise the orders of the trial court, of 27th July 2025, which convicted and sentenced the convict. Orders accordingly.

**DELIVERED, VIA EMAIL, DATED AND SIGNED IN
CHAMBERS, AT BUSIA, ON
THIS 27TH DAY OF FEBRUARY 2026.**

**W MUSYOKA
JUDGE**

Mr. Arthur Etyang, Court Assistant.

Advocates

**Mr. Otieno, instructed by Masiga Otieno & Associates,
Advocates for the applicant herein.**

**Mr. Onanda, instructed by the Director of Public
Prosecutions, for the respondent.**