

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT CHUKA**  
**MISC. CRIMINAL APPLICATION NO. E032 OF 2025**

**LOYFORD KIMATHI MUKURU**

**.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDEN**

**T**

**R U L I N G**

1. Loyford Kimathi Mukuru (Applicant) was charged with the offence of stealing by servant contrary to section 268 as read with section 281 of the Penal Code. He faced five counts. Upon conclusion of the trial, he was convicted on all counts and sentence to serve 6 years imprisonment on each count. The sentences were to run concurrently.
  
2. The Applicant subsequently filed an application for revision of sentence being Criminal Revision No.149

of 2023. The Application was heard and dismissed by Gitari J. on 18<sup>th</sup> April 2024.

3. Undeterred, the Applicant filed the present undated Application seeking a reduction of his sentence on the grounds that he had served a third of his sentence; was a first offender; was remorseful; had 3 dependent children, and; his health was deteriorating.

4. The averments in the supporting Affidavit mirror the grounds set out above.

5. The Applicant filed undated submissions, in which he urged this court to exercise its power of revision as provided by Section 362 of the Criminal Procedure Code. He stated that he did not file an appeal because he was satisfied with the judgement. He

submitted that he was a first offender; a breadwinner for his family; was deserving of consideration as he was entitled to the least severe punishment, and; his health had deteriorated in prison. He further submitted that his minor children have been rendered desperate by his incarceration.

6. The Respondent on their part identified two issues for consideration being; whether the Petitioner was entitled to a sentence reduction and whether he was entitled to a non-custodial sentence. They submitted that the sentence meted out against the Applicant was legal, just and fair. That the learned trial Judge considered all the relevant factors and arrived at a proper sentence in the circumstances.

7. On the Applicant's plea for a non-custodial sentence, the Respondent urged that the offence was serious and called for a custodial sentence.

## **Analysis and determination**

8. This court's revisionary jurisdiction is set out in sections 362- 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.**

**“363. (1) A subordinate court of the first class may call for and examine the record of any criminal proceedings of a subordinate court of a lower class than it and established within its local limits of jurisdiction, for the purpose of satisfying**

**itself as to the legality, correctness or propriety of any finding, sentence or order recorded or passed, and as to the regularity of the proceedings.**

**(2) If a subordinate court acting under subsection (1) considers that a finding, sentence or order of the court of lower class is illegal or improper, or that the proceedings were irregular, it shall forward the record with its remarks thereon to the High Court.**

**“364. (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) -**

**(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.”**

[Underline mine]

9. The section above empowers the court in revising sentence, to increase, reduce or alter the nature of the sentence.

10. I called for and considered the trial record. *Prima facie* there was no irregularity in the proceedings. With respect to sentence section 281 of the Penal Code provides:-

**“281. If the offender is a clerk or servant and the thing stolen is the property of his employer, or came into the possession of the offender on account of his employer, he is liable to imprisonment for seven years.”**

11. In this case the Applicant was convicted on all five counts and sentenced to serve 6 years for each count to run concurrently. The trial court observed when sentencing, that the victims of the Accused’s

offence were aged, sickly, demoralized, disgruntled, depressed, bankrupt and emotionally sick and that the accused had breached the trust they placed in him. The court went ahead to impose a custodial sentence stating that there was nothing to justify the imposition of any other sentence apart from a custodial one. The court also observed that the Accused was not remorseful.

12. In the present Application, the Applicant has stated that he was remorseful and had suffered in prison.

13. Sentencing serves multiple purposes including rehabilitation, retribution and deterrence. The Judiciary Sentencing Policy Guidelines 2023 provides:-

**Sentences are imposed to meet the following objectives. There will be instances in which the objectives may conflict with each other- in so far as possible, sentences imposed should be**

**geared towards meeting the objectives in totality.**

- i. Retribution.**
- ii. Deterrence.**
- iii. Rehabilitation.**
- iv. Restorative justice.**
- v. Community Protection.**
- vi. Denunciation.**
- vii. Reconciliation.**
- viii. Reintegration.**

14. In this case, and as I have earlier stated, the trial court considered the circumstances of the case which I agree with her were quite disturbing. She exercised her discretion to mete out an appropriate sentence. I cannot fault her discretion. I am guided by the case of **Bernard Kimani Gacheru vs Republic (2002) eKLR**, the Court of Appeal stated that:-

***“ It is now settled law, following several authorities by this court and the high Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, the sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account the wrong material, or acted on the wrong principle. Even if, the appellate court feels that the sentence is heavy and that the appellate court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, anyone of the matters already states is shown to exist.”***

15. As I pen off, I observe that this is the second Application for sentence revision that the Applicant has filed in as many years. No changed circumstances have been demonstrated to warrant the court's consideration of the earlier verdict.
16. In the end the Application has no merit and is dismissed.

Orders accordingly.

**Ruling delivered, dated and signed at Chuka  
this 26<sup>th</sup> day of February, 2026.**

.....  
**R. LAGAT-KORIR**

**JUDGE**

**Ruling delivered in the presence of the Applicant present acting in person, Ms Rukunga for the Republic; Muriuki (Court Assistant).**