



REPUBLIC OF KENYA



**Njoroge v Republic (Criminal Revision E032 of 2026)
[2026] KEHC 3761 (KLR) (12 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 3761 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
CRIMINAL REVISION E032 OF 2026
LN MUTENDE, J
MARCH 12, 2026**

BETWEEN

FRANCIS MUHUHA NJOROGE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. This revision arises from a decision by the learned trial Magistrate, Hon. Mary Osoro, SRM, in Nyahururu Chief Magistrate's Court Criminal Case No. E089 of 2026. The matter was brought to this court's attention through an undated letter authored by Njoki Mureithi & Co. Advocates filed herein on 6th March, 2026.
2. The gist of the matter is that the Applicant, Francis Muhuha Njoroge was charged with the offence of Logging in a National Park contrary to Section 102(1) (c) as read with Section 102(1)(h) of the *Wildlife Conservation and Management Act*, Cap 376 Laws of Kenya.
3. Particulars of the offence were that on the 4th day of February, 2026, at around 1630hrs at Malewa area GPS Coordinates 37M 0224801 UTM 9969319 in Aberdare National Park in Kipipiri Sub-County within Nyandarua County, being a protected area, the Applicant was found logging 6 red cedar posts using a panga without authority from the Director General, Kenya Wildlife Service.
4. He pleaded guilty to the charge at the outset and as a consequence he was convicted on his own plea of guilty and sentenced to a fine of Kshs.200,000/- and in default to serve two (2) years imprisonment.
5. In the result, the Applicant approached this court pursuant to Section 362, 364 and 382 of the Criminal Procedure Code as construed with Article 50(2) (p) & (q) as conjunctively read with Article 50(6) (a) & (b) of *the Constitution*.



6. That the Applicant seeks sentence review based on the sentence review report on record. That the prosecution stated that the Applicant was found with only six (6) posts and that he was a first offender.
7. It is further urged that during mitigation the Appellant stated that he was remorseful, he had a young family with two (2) little children and was also taking care of his elderly mother.
8. That the pre-sentence report did not give the court the correct position as the area Chief was not consulted contrary to what is stated in the report.
9. Attached to the letter is a letter dated 3rd March, 2020 authored by the area Chief, Margaret Wambui who states that she has known the Applicant for a long time and she can vouch for his conduct. And that the area Chief is willing to supervise the Applicant if granted a non-custodial sentence.
10. Consequently, the prayer sought is for revision on the grounds that in determining whether to impose a custodial sentence, the court is required to take into account the following factors;
 - a. Gravity of the offence; sentence of imprisonment should be avoided for misdemeanor.
 - b. Criminal history of the offender. Taking into account the seriousness of the offences, first offenders should be considered for non-custodial sentence.
 - c. Character of the offender; non-custodial sentences are best suited for offenders who are already remorseful and receptive to rehabilitative measures.
 - d. Protection of the community; where the offender is likely to pose a threat to the community.
 - e. Offender's responsibility to third parties; where there are people depending on the offender.
11. That regarding the case, it appears that more emphasis was on deterrence than rehabilitation. That the Applicant had no previous convictions, he pleaded guilty to the charge which could have contributed to a reduction of sentence. Circumstances in which the crime was committed rendered it necessary to impose a non-custodial sentence.
12. That releasing the offender to a home-based rehabilitation would not be prejudicial to the society. Further to that, the Community Service Order Act makes it possible for courts to issue an order requiring the offender to perform community service an option available where the offender is convicted of an offence punishable by imprisonment for a term not exceeding three (3) years or imprisonment for a term exceeding three (3) years but for which the court determines that any of that term would be appropriate to be served within the community on unpaid public works.
13. That the trial court exercised discretion unfairly by imposing a very harsh sentence given the circumstances, a sentence that was punitive to warrant discretion under Section 362 to correct the error.
14. Revisional jurisdiction of the High Court is anchored in [the constitution](#) being the supreme law of the State and statute.
15. Article 165(6) & (7) of [the Constitution](#) provides thus;
 - (6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.
 - (7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.



16. This court has been called upon to act pursuant to various provisions of the law. Section 357 of the Criminal Procedure Code provides thus;

1. After the entering of an appeal by a person entitled to appeal, the High Court, or the subordinate court which convicted or sentenced that person, may order that he be released on bail with or without sureties, or, if that person is not released on bail, shall at his request order that the execution of the sentence or order appealed against shall be suspended pending the hearing of his appeal:

Provided that, where an application for bail is made to the subordinate court and is refused by that court, no further application for bail shall lie to the High Court, but a person so refused bail by a subordinate court may appeal against refusal to the High Court and, notwithstanding anything to the contrary in sections 352 and 359, the appeal shall not be summarily rejected and shall be heard, in accordance with such procedure as may be prescribed, before one judge of the High Court sitting in chambers.

2. If the appeal is ultimately dismissed and the original sentence confirmed, or some other sentence of imprisonment substituted therefor, the time during which the appellant has been released on bail or during which the sentence has been suspended shall be excluded in computing the term of imprisonment to which he is finally sentenced.
3.

17. That provision of the law empowers the High Court to grant bail pending appeal and even suspending the sentence pending hearing and determination of the appeal which is aimed at preventing an injustice. In such a case, the court would be considering whether or not the appeal has a chance of succeeding so that the Applicant does not serve a substantial part of sentence before the appeal is held and concluded.

18. Section 362 of the Criminal Procedure Code provides thus;

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.

19. In the instant scenario the High Court as a superior court has supervisory jurisdiction which is limited to correcting errors or mistakes, regularizing illegalities and procedural breaches in the subordinate court's decisions.

20. Section 364 of the Criminal Procedure Code provides thus;

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.



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.
21. The statute enacts powers of the High Court on determining either revision or appeal. Article 50(2) (p) & (q) of [the Constitution](#) provides that;
- (2) Every accused person has the right to a fair trial, which includes the right—
 - (p) to the benefit of the least severe of the prescribed punishments for an offence, if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing; and
 - (q) if convicted, to appeal to, or apply for review by, a higher court as prescribed by law
22. The right to appeal or seek review is fundamental which cannot be denied.
23. Article 50(6)(a) & (b) provides that;
- (6) A person who is convicted of a criminal offence may petition the High Court for a new trial if—
 - (a) the person's appeal, if any, has been dismissed by the highest court to which the person is entitled to appeal, or the person did not appeal within the time allowed for appeal; and
 - (b) new and compelling evidence has become available.
24. It is not alleged that the Applicant herein has stumbled on some evoking new evidence that was not available during trial and it is convincing enough that would make this court reach a contrary view. The matter has not been deliberated upon, it has not been determined on appeal. The remedies available have not been sought therefore it is not an appropriate provision of the law to be acted on in the circumstances.
25. The relief sought is however review of sentence imposed to a non-custodial one. An interpretation of Section 362 of the Criminal Procedure Code clearly shows that following a request by a party the court can intervene. On that basis I called for the record of the lower court to establish if there were any irregularities, in this matter.



26. In Republic v James Kiarie Mutungei [2017] KEHC (KLR) the court held that;

“...function of the court under section 362 of the Criminal Procedure Code as read with section 364 is to enable the court to scrutinize and examine the correctness of facts of a subordinate court or tribunal so as to make a finding on legality or propriety. Legality means lawfulness, strict adherence to law, correctness and propriety ordinarily having the same meaning. It can be deduced from this evaluation that the jurisdiction on revision will be invoked where there is a decision by a subordinate court, the decision is not subject of appeal, the grounds of revision must exist against the decision being challenged from the subordinate court. The interference under section 362 by this court on revision can only be justified if the impugned decision is grossly erroneous, to justness appropriateness and suitability to trial.”

27. In Republic v Samuel Gathuo [2016] eKLR HPG Waweru J. held that;

“Needless to say, that supervisory jurisdiction is exercised as may be provided by law – by way of appeal, revision, etc. It does not include any perceived power to make a decision on behalf of a subordinate court which that court ought to make. In the case of appeals the supervisory power is exercised in respect to convictions, sentences, acquittals (sections 347, 348 and 348A of the Criminal Procedure Code, Cap 75). As for revision, the supervisory jurisdiction is exercised in respect to findings, sentences, orders and regularity of any proceedings. See Article 165 (7) of *the Constitution* and sections 362 and 364 of the Criminal Procedure Code.”

28. The Applicant contravened the provisions of Section 102(1) (c) as read with Section 102(1) (h) of the *Wildlife Conservation and Management Act* which provides thus;

1) Any person who without a licence or permit of the Service in respect of any national park, national reserve, wildlife sanctuary or marine reserve, or, without authorization from the authority responsible for any other protected area as the case may be—

(c) carries out logging in a national park or reserve;

(h) undertakes any related activity in wildlife protected areas contrary to the provisions of this Act: commits an offence and is liable on conviction to a fine of not less than two hundred thousand shillings or to imprisonment of not less than two years or to both such fine and imprisonment.

29. Sentencing is a discretion of the trial which is ordinarily guided by the law to reach the decision as to which sentence is passed. In doing so the court is usually guided by the objective of sentencing that includes deterrence, retribution, rehabilitation, incapacitation, and restoration. The court also takes into consideration the nature of offence, circumstances in which the offence was committed, aggravating and mitigation factors but above all statutory requirement.

30. In Shadrack Kipkoech Kogo v Republic, Cr. Appeal No. 253 of 2003 the Court of Appeal held that;

“Sentence is essentially an exercise of discretion by the trial court and for this court to interfere it must be shown that in passing the sentence, the sentencing court took into account irrelevant factor or that a wrong principle was applied or that short of these, the sentence



itself is so excessive and therefore an error of principle must be interfered. (See also Sayeka vs. Republic 1987 eKLR 306).”

31. In *Ogolla s/o Owour v Regina* (1954) EACA 270 the court stated that;
“The court does not alter a sentence unless the trial judge has acted upon wrong principles or overlooked some material factors.”
32. The penal part of the provision contravened provides for;
“...liable on conviction to a fine of not less than two hundred thousand shillings or to imprisonment of not less than two years or to both such fine and imprisonment.”
33. The phrase simply specifies a minimum penalty the court was obligated by statute to impose hence the court did not act on wrong principles of the law.
34. The trial court is faulted for putting more emphasis on deterrence than rehabilitation as an objective of sentence and that the Applicant having been a first offender, the court should have considered community service order so as to perform unpaid work.
35. Section 3 of the *Community Service Orders Act* provides thus;
 - (1) Where any person is convicted of an offence punishable with—
 - a. imprisonment for a term not exceeding three years, with or without the option of a fine; or
 - b. imprisonment for a term exceeding three years but for which the court determines a term of imprisonment for three years or less, with or without the option of a fine, to be appropriate, the court may, subject to this Act, make a community service order requiring the offender to perform community service.
 - (2)
 - a. Community service shall comprise unpaid public work within a community, for the benefit of that community, for a period not exceeding the term of imprisonment for which the court would have sentenced the offender.
 - b. For the purposes of this Act, public work shall include but not be limited to—
 - i. construction or maintenance of public roads or roads of access;
 - ii. afforestation works;
 - iii. environmental conservation and enhancement works;
 - iv. projects for water conservation, management or distribution and supply;
 - v. maintenance work in public schools, hospitals and other public social service amenities;
 - vi. work of any nature in a foster home or orphanage;
 - vii. rendering specialist or professional services in the community and for the benefit of the community, and the nature or type of public work shall, in any particular case, be determined by the court after consultation with the community service orders committee.



- (3) Where a court determines that a community service order should be made, it shall, before making the order, direct a community service officer to conduct an inquiry into the circumstances of the case and of the offender and report the findings to the court.
- (4) ...
- (5)
- (10) Subsection (1) of this Act shall not apply to a person who is convicted under the following legislation—
- a. the *Anti-Corruption and Economic Crimes Act* (Cap. 65);
 - b. the *Sexual Offences Act* (Cap. 63A);
 - c. the *Prohibition of Female Genital Mutilation Act* (Cap. 62B);
 - d. the *Prevention of Terrorism Act* (Cap. 59B);
 - e. the *Proceeds of Crime and Anti-Money Laundering Act* (Cap. 59A); or
 - f. the *Bribery Act* (Cap. 79B).
36. Community Service Orders, a punishment recognized by Section 24 of the Penal Code is served as a rehabilitative or restorative measure. The law targets non-serious offences. Serious offences are excluded. It will be a question of the court considering if it is suitable for an offender to be referred to perform unpaid public work. This means it is at the discretion of the court.
37. A total consideration of the application herein is the fact that the Applicant is aggrieved with the sentence imposed. His intention is to have it overturned by the instant court. In *Joseph Nduvi v Republic* [2019] KEHC 9895 (KLR) the court stated that;
- “In my view, the revisionary jurisdiction of the High Court should only be invoked where there are glaring acts or omissions but should not be a substitute for an appeal. In other words, parties should not argue an appeal under the guise of a revision. It is for this reason that the decision whether or not to hear the parties or their advocates is discretionary save for where the orders intended to be made will prejudice the accused person. As was stated by the High Court of Malaysia in *Public Prosecutor vs. Muhari bin Mohd Jani and Another* [1996] 4 LRC 728 at 734, 735:
- “The powers of the High Court in revision are amply provided under section 325 of the Criminal Procedure Code subject only to subsections (ii) and (iii) thereof. The object of revisionary powers of the High Court is to confer upon the High Court a kind of “paternal or supervisory jurisdiction” in order to correct or prevent a miscarriage of justice. In a revision the main question to be considered is whether substantial justice has been done or will be done and whether any order made by the lower court should be interfered with in the interest of justice...If we have been entrusted with the responsibility of a wide discretion, we should be the last to attempt to fetter that discretion...This discretion, like all other judicial discretions ought, as far as practicable, to be left untrammelled and free, so as to be fairly exercised according to the exigencies of each case.”
38. The trial court exercised discretion within the laid down law. Therefore, the sentence meted out was legal and proper. It would not be just for the Applicant to argue an appeal disguised as an



application for review. Apparently, no irregularity has been occasioned that would require this court to act pursuant to Section 362 of the Criminal Procedure Code.

39. The upshot of the above is that the application is devoid of merit. Accordingly, it is dismissed.

40. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 12TH DAY OF MARCH, 2026.

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L.N. MUTENDE

JUDGE

