

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MACHAKOS**  
**HIGH COURT CRIMINAL REVISION NO E066 OF 2025**

**JOSEPH MARY.....APPLICANT**

**VERSUS**

**REPUBLIC .....**

**RESPONDENT**

*(Arising from the conviction and sentence of four years imprisonment by  
Hon P.E Nabwana (SRM) in criminal case file No E160 of 2025 at  
Wamuyu Law Court)*

**RULING**

1. The applicant has moved this court by way of a Notice of Motion seeking review of the sentence of four years' imprisonment imposed in Wamunyu Criminal Case No. E160 of 2025. The application is premised upon Article 50(2)(p) and (q) of the Constitution and sections 362 to 367 of the Criminal Procedure Code. It is supported by the applicant's affidavit and the grounds that he has no intention of filing an appeal and the court should review the sentence to a more lenient sentence.
2. The record shows that the applicant was charged with two counts. The first was stealing stock contrary to section 278 of the Penal Code, particulars being that on 30th June 2025 at Masii Location, Mwala Sub-County, within Machakos County, he stole two bulls valued at Kshs. 94,000/- belonging to Paul Mbuvi Nzibo. In the

alternative, he faced a charge of handling stolen goods contrary to section 322(1) as read with section 322(2) of the Penal Code. The second count was stealing contrary to section 268(1) as read with section 275 of the Penal Code, particulars being that on diverse dates between 1st and 2nd June 2025, within Mwala Subcounty within Machakos County stole a National Identity Card No 33944755 belonging to Jackson Kathumbi. Again, an alternative charge of handling stolen property contrary to section 322(1) as read with section 322(2) of the Penal Code was preferred.

3. The applicant pleaded guilty to both the counts. The facts of the first charge were read and the applicant was convicted on his own plea of guilt. The trial court considered his mitigation and the probation officer's report and proceeded to sentence him to four years' imprisonment without the option of a fine. Notably, the record reveals that only the facts relating to the first count were read out, and sentence was imposed thereon. No sentence was passed in respect of the second count or its alternative.
4. Section 278 of the Penal Code provides that stealing stock attracts a penalty of up to fourteen years' imprisonment. The sentence of four years imposed was therefore well within the statutory limits and cannot be said to be excessive. The applicant has not demonstrated any error of principle, misdirection, or illegality in the exercise of discretion by the trial court. His plea for

leniency, without more, does not suffice to invoke this court's revisionary jurisdiction.

5. Sections 362 and 364 of the Criminal Procedure Code empowers the High Court to call for and examine the record of any criminal proceedings before a subordinate court to satisfy itself as to the correctness, legality, or propriety of any finding, sentence, or order. The jurisdiction is not to be exercised routinely or as a matter of course, but only where there is a patent defect, gross error, or illegality. this was emphasized in **Kibet & 2 others v Republic 3) [2023] KEHC 24772 (KLR)**, where the court stated that, revisionary powers are meant to correct glaring errors of law or jurisdiction, not to substitute the court's discretion merely because an accused is dissatisfied with the outcome.
6. In the present case, the applicant was charged with two counts as set out above. A perusal of the record does not indicate any further proceedings in respect to count two. There is no proof that either the facts were read to the accused or that the charge was withdrawn. Equally, the court did not pronounce itself on the sentence regarding to the second count. It therefore emerges that the only irregularity apparent is with the proceedings on count two, which were inadvertently left incomplete despite the applicant's plea of guilty and there is no indication that the count was withdrawn.
7. That omission, however, does not render the sentence imposed on the first count unlawful. If anything, it worked

to the applicant's advantage, as he had escaped punishment on the second count. However, since this court is exercising supervisory jurisdiction, I find that a procedural error was committed by the trial court and this court cannot close its eyes.

8. Accordingly, in exercise of the supervisory jurisdiction of this court I remit the file back to the trial court for purposes of concluding the trial process in respect of count two only.
9. I find that the sentence of four years' imprisonment imposed by the trial court was lawful, proper, and lenient given the gravity of the offence and the statutory maximum of fourteen years.
10. The Deputy Registrar to transmit a copy of this Ruling and the trial court file before the Wamuyu Law Court for further action. Mention on 29<sup>th</sup> April 2026 before the Trial Court in Wamuyu Production Order to issue for the accused to be presented before court.

Dated, signed and delivered at Machakos this 26<sup>th</sup> day of March, 2026.

**RHODA RUTTO**

**JUDGE**

**In the presence of;**

.....Applicant

.....Respondent

Selina Court Assistant

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