



REPUBLIC OF KENYA



KENYA LAW
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**Mutuku v Republic (Criminal Revision E118 of 2025)
[2026] KEHC 5841 (KLR) (30 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 5841 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CRIMINAL REVISION E118 OF 2025
JN ONYIEGO, J
APRIL 30, 2026**

BETWEEN

EZEKIEL MUTUKU APPLICANT

AND

REPUBLIC RESPONDENT

*(Being revision application against the sentence of Hon. B.Ireri (SPM) in
Criminal Case No. 687 of 2019 delivered on 7-9-2023 at Makindu law courts.)*

RULING

1. The applicant herein was charged jointly with another with the offence of dealing in meat of wild life species contrary to section 98(1) of the wild life conservation and management Act 2013. Particulars were that on 18th day of July 2019, at Sokomo Area in Kibwezi Sub-County within Makueni County, jointly were found dealing with a meat of wildlife species namely grant Gazelle without authority from KWS Director.
2. Having denied the charge, the case proceeded to full trial. Consequently, he was found guilty and sentenced to two years imprisonment. At the same time, he was found guilty in criminal case number E181 OF 2021 for being found in possession of wildlife trophies. He was sentenced to serve 3 years imprisonment to run consecutively with the sentence of 2 years aforesaid.
3. Subsequently, he has now moved to this court vide an undated notice of motion seeking review of sentence on grounds that; he has served a substantial sentence of cumulative sentence; he be committed to CSO or his sentence be revised to run concurrently.
4. In response, prosecution did not oppose the application.



5. I have considered the application and the oral submissions by both parties. The main issue for determination is whether this Honourable Court has jurisdiction to determine the application herein and issue the orders sought.
6. The law governing revision in a criminal case is captured under Section 362 and 364 of the Criminal Procedure Code which provides as follows;

“ 362. Power of High Court to call for records

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.

364. Powers of High Court on revision

(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

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(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) in proceedings under Section 203 or 296(2) of the Panel Code (Cap. 63), the *Prevention of Terrorism Act* (Cap. 59B), the *Narcotic Drugs and Psychotropic Substances (Control) Act* (Cap. 245), the Prevention of Organized Crimes Act (Cap. 59), the *Proceeds of Crime and Anti-Money Laundering Act* (Cap. 59A), the *Sexual Offences Act* (Cap. 63A) and the *Counter-Trafficking in Persons Act* (Cap. 61), where the subordinate court has granted bail to an accused person, and the Director of Public Prosecution has indicated his intention to apply for review of the order of the court, the order of the subordinate court may be stayed for a period not exceeding fourteen days pending the filing of the application for review.

(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.
7. It is clear from the above provisions that an application for review of sentence can be entertained only for purposes of the court satisfying itself as to the correctness, legality or propriety of the proceedings. Section 364(5) of the Criminal Procedure Code is emphatic that no application for revision should be entertained where an appeal lies from a sentence or order. This position was espoused in Criminal Revision number 194 of 2023 Kisii High Court in the case of Barongo Siano Atembe vs Republic.
 8. In the instant case, the court is being asked to exercise mercy and therefore reduce the sentence. There is no application nor appeal filed challenging the legality or otherwise propriety of the sentence imposed. It is trite that sentencing is at the discretion of the court. An Appellate Court can only interfere if the same is illegal, excessive or imposed after taking into account wrong legal principles or taking into account irrelevant factors.
 9. In the instant case, I do not see any good reason persuasive enough to interfere with the legal sentence imposed. Accordingly, application is hereby dismissed.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 30TH DAY OF APRIL 2026

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J. N. ONYIEGO

JUDGE

