



REPUBLIC OF KENYA



KENYA LAW
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**Maina v Republic (Criminal Revision E261 of 2024)
[2025] KEHC 5209 (KLR) (25 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5209 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CRIMINAL REVISION E261 OF 2024**

MA ODERO, J

APRIL 25, 2025

BETWEEN

LEWIS DUBA MAINA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant Lewis Duba Mainahas filed an application seeking review of his sentence.
2. The Applicant had been charged in the Lower Court with Count No. 1 of Malicious Damage to Property contrary to section 339 of the *Penal Code*. Count No. 2 of Creating a Disturbance contrary to Section 95(1) of the *Penal Code* and Count No. 3 of Being in Possession of Ammunition without a Firearms Certificate contrary to Section 4(1) (2) (a) as read with Section 3(a) of the *Firearms Act* 2014.
3. The Applicant pleaded ‘Guilty’ to all three counts. The facts were read out to him and he was duly convicted. Thereafter the Applicant proffered mitigation and a pre-sentence report was filed. He was then sentenced to serve three (3) years imprisonment without option of a fine on Count No. 1 and was sentenced to six (6) months imprisonment without option of a fine on Count No. 2. Finally on Count No. 3 the applicant was sentenced to serve five (5) years imprisonment without option of a fine.
4. The Applicant now prays to have his sentences reviewed.
5. The ODPP represented by the learned state counsel do not oppose this application for review of sentence.



6. The Power of the High Court to review sentences is set out in Section 362 of the Penal Code, cap 63 Laws of Kenya which provide as follows:-

“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 in any such subordinate court.”

7. The orders which the High Court may make upon revision are provided by Section 364 of the Penal Code.

8. I have carefully perused the proceedings of the trial before the lower court. I note that the correct procedure was followed in all aspects. The Applicant pleaded guilty and the facts were read out to him. Upon conviction the Applicant was granted an opportunity to mitigate before sentence was passed.

9. However as pointed out by learned state counsel who conceded to this application for review no report was tabled in court to prove that the ‘ammunition’ allegedly recovered (which were spent bullet) fell under the definition of ‘ammunition’ within the Firearms Act, Cap 114 Laws of Kenya.

10. Further the Applicant pleaded guilty to the offences thereby saving the court the rigours of a full trial. The Applicant was a first offender yet he was not granted the option of a fine and instead was slapped with maximum sentences.

11. I am of the view that the sentences imposed upon the applicant were in the circumstances excessive. Accordingly I do allow this application for review and now impose the following sentences.

Count a. Reduced to a fine of Kshs. 50,000 in default to serve one (1) year imprisonment.

No. 1
Count b. Sentence is reduced to time served.

2
Count c. Sentence reduced to time served.

3
It is so ordered.

DATED IN NYERI THIS 25TH DAY OF APRIL 2025.

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MAUREEN A. ODERO

JUDGE

