



**Ali v Republic (Miscellaneous Criminal Application
E021 of 2025) [2025] KEHC 9405 (KLR) (30 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9405 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
MISCELLANEOUS CRIMINAL APPLICATION E021 OF 2025**

JN ONYIEGO, J

JUNE 30, 2025

BETWEEN

ABDI HISH ALI APPLICANT

AND

REPUBLIC RESPONDENT

*(Being a revision application against the sentence delivered by Honourable
J. Omwange on 27-05-2024 in Garissa law courts CMCR E062 OF 2025)*

RULING

1. The applicant herein was charged with the offence of stealing contrary to Section 268(1) as read with Section 275 of the penal code. Particulars were that on the diverse dates between 13th day of December of 2023 to 2nd of April 2024 in Garissa Township Garissa Sub-County within Garissa County he stole Kshs 870,616/= from mobile banking of one Abdi Hassan Shurie to his Safaricom account, the property of Abdi Hassan Shurie.
2. Having pleaded guilty, he was sentenced to serve four years imprisonment. Aggrieved by the sentence which he claimed to have been harsh, he moved to this court via a notice of motion dated 20th May 2025 seeking revision of the said sentence.
3. In response, Mr. Owuor learned prosecution counsel conceded the application on grounds that the sentence was illegal. I have considered the application herein which is not opposed.
4. The law governing revision in a criminal case is section 362 and 364 of the CPC. Section 362 and 364 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 —

(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.
5. 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 [CPC](#) 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 Sianyo Atembe versus Republic](#).
6. In the instant case, the applicant was charged with the offence of stealing contrary to section 268(1) as read with Section 275 of the [Penal Code](#). The maximum penalty provided in respect of that offence is three years imprisonment. In the instant case, the question of legality of the sentence imposed has been cited. Whereas sentencing is at the discretion of the trial court, an appellate court can interfere if its established that the same is excessive, it is illegal or arrived at after considering wrong principles of the law. See [Prosecutor v Stephen Lesinko](#) (2018) eKLR.
7. By giving 4 years imprisonment, the sentence is definitely illegal hence calling for revision. Although the applicant sought for leniency, the offence committed was serious and a commensurate sentence is necessary. The amount stolen was so huge calling for a deterrent sentence. Accordingly, the sentence of four years is hereby set aside and the same is substituted with three years imprisonment to start running from the date of sentence by the trial court

DATED, SIGNED AND DELIVERED THIS 30TH DAY OF JUNE 2025

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J. N. ONYIEGO

JUDGE

