



**Khalif v Republic (Miscellaneous Criminal Application
E014 of 2025) [2025] KEHC 9419 (KLR) (30 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9419 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
MISCELLANEOUS CRIMINAL APPLICATION E014 OF 2025**

JN ONYIEGO, J

JUNE 30, 2025

BETWEEN

MOHAMED ADAN KHALIF APPLICANT

AND

REPUBLIC RESPONDENT

*(Being a revision application against the sentence delivered by the Honourable
A. Aganyo (PM) on 20-02-24 in Wajir criminal case No. E007 of 2024.)*

RULING

1. The applicant herein was charged with the offence of stealing contrary to Section 279(a) of the [penal code](#). Particulars are that on 2nd day of February 2024 in Wajir South Sub-County in Wajir County in the republic of Kenya he stole Kshs 20,000 the property of Sophia Sahara Ali.
2. Having pleaded guilty, he was convicted on his own plea of guilty and consequently sentenced to serve four years imprisonment.
3. Aggrieved by the said sentence, the applicant moved to this court once again vide an undated general application seeking review of his sentence on grounds that he has since reformed and that the sentence was harsh considering that he had refunded the stolen money.
4. In response, the respondent through Mr. Owuor conceded to the application urging that the sentence imposed was excessive as the maximum provided for the offence of stealing is three years
5. I have considered the application herein and the response thereof. 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.
6. 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 v Republic*.
7. In the circumstances of this case, the legality of sentence has been cited. Whereas sentencing is at the discretion of the trial court, an appellate court can interfere if it is 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.
8. The applicant herein was charged with stealing c/s 279(a) of the [penal](#) court which attracts a penalty of 14 years imprisonment. I have looked at the pre-sentence report of the applicant which describes him as a bad person not required in the community. As an enlisted private police reservist, he was accused by the area OCPD as a dangerous man who could erect illegal road blocks. His family do not want him as he has no known place of fixed abode. The area chief and Assistant chief painted him a negative picture.
9. However, taking into account that the applicant pleaded guilty to the charge saving the court time, and further taking into account that he has refunded part of the money, I find a sentence of four years excessive. Accordingly, the sentence of four years is substituted with that of two years.

ROA 14 days

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 30TH DAY OF JUNE 2025.

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J. N. ONYIEGO
JUDGE

