



**Khabar v Republic (Miscellaneous Criminal Application
E025 of 2025) [2025] KEHC 11400 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11400 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
MISCELLANEOUS CRIMINAL APPLICATION E025 OF 2025**

**JN ONYIEGO, J
JULY 31, 2025**

BETWEEN

DINNOW MOHAMED KHABAR APPLICANT

AND

REPUBLIC RESPONDENT

*(Being revision application against the sentence of hon. X. Baraka (RM) dated
31st January 2025 in Wajir PM's court criminal case No. E348 of 2024)*

RULING

1. The applicant herein was charged and convicted of two counts namely; stealing c/s 268(1) as read out with section 275 of the [Penal Code](#) (counts I) in that he stole one door valued at Kes 10,000/= the property of catholic primary school; malicious damage to property c/s to Section 339(1) of the [Penal Code](#) (II) in that he maliciously damaged a submissive water control unit system valued at kes 12,000/= the property of Catholic school.
2. Having denied the charge, the matter proceeded to full trial. At the conclusion of the hearing, he was convicted and subsequently sentenced to serve three years imprisonment for each of the counts I and II. That sentences to run concurrently.
3. He has now moved to this court seeking review of his sentence on grounds that; he did not give proper mitigation during sentencing; he is a father of 3 children and the sole breadwinner; his children are suffering in his absence and that he has aged parents with the father being blind.
4. Basically, the applicant is seeking revision of his sentence to enable him get out of prison. In response, the respondent opposed the application on grounds that the sentence is legal and appropriate. Counsel however urged the court to consider the period spent in remand custody.



5. I have considered the application herein and the response thereof. The law governing revision in a criminal case is captured under 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. From the record, the court is merely being asked to exercise mercy on the applicant. However, on the question whether Section 333(2) of the [CPC](#) was considered, the record is clear. The court did direct remand period be deducted but failed to state the specific period. In any event, having imposed the maximum sentence of 3 years for the offence of stealing, what period was deducted and from which sentence?
 8. Further, considering the mitigation on record and the value of what was stolen, giving maximum sentence was excessive and harsh. Taking into account the mitigation on record which is persuasive, value of the stolen property and the fact that he had spent 41 days in remand custody, a sentence of 18 months would suffice. Accordingly, the sentence of 3 years imprisonment is substituted with the sentence of 18 months for each of the counts and the same to run concurrently.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 31ST DAY OF JULY 2025

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J. N. ONYIEGO

JUDGE

