



REPUBLIC OF KENYA



KENYA LAW
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**Konde v Republic (Criminal Revision E038 of 2025)
[2025] KEHC 11732 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11732 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
CRIMINAL REVISION E038 OF 2025**

**M THANDE, J
JULY 31, 2025**

BETWEEN

AGNES KONDE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant and her co-accused were charged with the offence of stealing, contrary to Section 268(1) as read with Section 275 of the *Penal Code*. The Applicant and her co-accused were convicted of their own plea of guilty. The Applicant was sentenced to a fine of Kshs. 50,000/= and in default, 2 years imprisonment.
2. In her Application brought under Section 364 of the *Criminal Procedure Code*, the Applicant seeks that her sentence be reviewed to a noncustodial sentence. She stated that she is a mother of a 2 year old son in need of parental guidance. The child is currently under the care of the Applicant's elderly and sickly mother. She stated that she has undergone rehabilitation programs like cooking and farming. She is also remorseful and promises to be a law abiding citizen for the rest of her life.
3. The Respondent opted not to file any response.
4. The *Constitution* has conferred upon this Court supervisory jurisdiction over subordinate courts. Article 165(6) and (7) provides as follows:
 - (6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.
 - (7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice



5. In exercise of its supervisory jurisdiction, this Court is empowered to call for the record of proceedings in such subordinate courts, and make and give appropriate orders and directions as it deems necessary to ensure the fair administration of justice.
6. To give effect to this provision with regard to criminal matters, the [Criminal Procedure Code](#) elaborates the purpose of calling for the record of proceedings in subordinate courts by this Court, which is to satisfy itself as to the correctness, legality or propriety of any finding or order. Section 362 of the [Criminal Procedure Code \(CPC\)](#) provides:

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.
7. Where the Court finds after examining the record of proceedings before a subordinate court that the same are wanting in correctness or that there is illegality or impropriety of a finding, order or sentence, the Court may by dint of the revision powers conferred upon it by Section 364 of the [CPC](#), enhance the sentence or alter or reverse the order except that of an acquittal. Section 364(5) of the [CPC](#) however, is explicit that 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 instance of the party who could have appealed.
8. Section 347 of the [Criminal Procedure Code](#) provides that a person convicted on a trial held by a subordinate court may appeal to the High Court. Our courts have repeatedly stated in many cases, that where a clear procedure for redress is prescribed by the [Constitution](#) or a statute, that procedure should be strictly followed. One such case is [Speaker of the National Assembly v James Njenga Karume](#) [1992] eKLR where the Court of Appeal stated:

In our view, there is considerable merit in the submission that where there is a clear procedure for the redress of any particular grievance prescribed by the [Constitution](#) or an Act of Parliament, that procedure should be strictly followed.
9. The Applicant has not demonstrated that the sentence imposed upon her is illegal. In the premises the orders sought cannot be granted by this Court sitting as a revision court. Flowing from the above stated provisions of the law and the authority cited, the Applicant's redress lies with the appellate court. It is in the exercise of its appellate jurisdiction that this Court can examine the record and look at the sentence complained about and make a decision thereon.
10. In light of the foregoing, the Court finds that the Application herein lacks merit and the same is dismissed.

DATED SIGNED AND DELIVERED IN MALINDI THIS 31ST DAY OF JULY 2025

M. THANDE

JUDGE

