



REPUBLIC OF KENYA



**Kusya v Republic (Criminal Revision E032 of 2025)
[2025] KEHC 11701 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11701 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
CRIMINAL REVISION E032 OF 2025**

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

BETWEEN

MERCURY K. KUSYIA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant was convicted in Malindi Criminal Case No. E601 of 2023 of the offences of causing actual bodily harm, contrary to Section 251 of the Penal Code, and accusing another to be a witch, contrary to Section 6 of the *Witchcraft Act*. He was sentenced to 3 years and 2 years imprisonment respectively.
2. In his Application, the Applicant seeks that his sentence be reviewed to either a fine or a noncustodial sentence to work in the community. He stated that he is the sole breadwinner of his young siblings and children. He promised to obey all orders of the Court and adhere to all rules and protocols of the probation officer.
3. The Respondent opted not to file a 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 [CPC] 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 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.
8. The Applicant has not demonstrated that the sentence imposed upon him is illegal or that there was incorrectness, illegality or impropriety in the proceedings leading to his sentence. In the premises the orders sought cannot be granted by this Court sitting as a revision court.
9. Section 347 of the CPC provides that a person convicted in 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.

10. A party who is aggrieved by any sentence imposed upon him by a court ought to appeal against the same. Section 364[5] of the CPC 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.
11. 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.
12. In light of the foregoing, the Court finds that the Application is unmerited and the same is hereby dismissed.

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

M. THANDE

JUDGE

