

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL REVISION NUMBER 2 OF 2014

**From original conviction and sentence by Senior Principal Magistrate (Mr. B. J. Ndeda, SPM) in
Garissa CM's Criminal Case Number 1539 of 2013.**

MOHAMED ABDI ISMAIL.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

By a letter dated 14th February 2014 addressed to the Deputy Registrar of this court, Mohamed Abdi Ismail, the applicant, is seeking revision of the orders of the Senior Principal Magistrate arising from the conviction and sentence in the Chief Magistrate's Criminal Case Number 1539 of 2013.

In that case the applicant is jointly charged with another in three counts of being in possession of firearm, ammunition and firearm accessories without a firearm certificate contrary to sections 4 (2) (a) and 26 (1) (e) of the Firearms Act and a fourth count of conveying suspected stolen mobile phones contrary to section 323 of the Penal Code. The applicant pleaded guilty to counts 1, 2 and 3 but pleaded not guilty to count 4. He was convicted and sentenced to seven years imprisonment in each count and the case was listed for hearing in respect of count 4.

I have understood his application as contesting the severity of the sentence and that the plea was not unequivocal. It is my view that the applicant has approached this court wrongly. Section 364(5) of the Criminal Procedure Code is clear 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 insistence of the party who would have appealed.”

That provision is as clear as daylight. In the matter before me an appeal lies in the orders of the lower court. The applicant however chose to come to this court by way of revision. The applicant is challenging more than the sentence and he would be better placed, in my view, if he were to bring an appeal instead.

For the above reason and for failure to abide by Section 364(5) of the CPC, I decline to entertain this application for revision. The applicant is at liberty to file an appeal after which this court can address the matter. It is so ordered.

Dated, signed and delivered this 18th day of June 2014

S.N.MUTUKU

JUDGE