



REPUBLIC OF KENYA



**Asharo v Republic (Miscellaneous Application E024 of 2024)
[2024] KEHC 14344 (KLR) (14 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14344 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
MISCELLANEOUS APPLICATION E024 OF 2024
JN ONYIEGO, J
NOVEMBER 14, 2024**

BETWEEN

YAHYA JILO ASHARO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant approached this Court vide an undated chamber summons seeking reduction of his sentence.
2. He was previously charged with the offence of dealing in the carcass of wildlife species contrary to section 98(1) as read with section 105 of the *Wildlife Conservation and Management Act*, No 47 of 2013. The particulars were that on 28.12.2023 at around 1135 hrs, at Bula Argy area Iftiin Location in Garissa Sub County within Garissa County jointly with others they were found in possession of wildlife species namely giraffe to wit 61 kgs without a permit from the Director Kenya wildlife Services.
3. On his own plea of guilt, he was sentenced to 3 years' imprisonment.
4. Mr. Kihara, the learned prosecutor argued the application orally while the applicant fully relied on his pleadings as filed.
5. Mr. Kihara opposed the application urging that the same lacked merit as the applicant pleaded guilty of the said charge. That nothing was demonstrated to show that the conviction and the sentence meted out were irregular. It was argued that the application ought to be dismissed as the same was bereft of any merit.
6. The applicant on the other hand urged that he had stayed in prison for a period of 9 months and already transformed. It was his prayer that he has a family which is suffering for the reason that it lacks a provider. He prayed for consideration given that he is the sole breadwinner. He sought for leniency



stating that he is a first offender and therefore, this court be pleased to reduce his sentence or acquit him of the offence.

7. It was his contention that he was remorseful for his actions and further promised that should his plea be considered, he will use that opportunity to transform others.
8. I have carefully read and understood the application together with the submissions before me. The applicant is not challenging conviction but rather seeking leniency in terms of review of sentence.
9. It is pertinent to note that the High Court's supervisory jurisdiction which includes its revisional jurisdiction is limited to revision of orders or sentences passed by subordinate courts in criminal proceedings. A reading of sections 362 to 367 of the [Criminal Procedure Code](#) makes this legal position very clear.
10. This position is further buttressed by article 165 (6) of the [Constitution](#) which provides that:“(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.”
11. Section 364 of the Criminal Procedure Code outlines the powers of the High Court under article 165 of the [Constitution](#) and section 362 of the [Criminal Procedure Code](#) and states how the powers are to be exercised as follows: -

364. Powers of the 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.
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 that 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 a 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.
12. From the above provision, it is clear that the jurisdiction of the High Court on Revision is to correct manifest irregularities and illegalities. The applicant has not pointed out any irregularities or illegalities but to the contrary, he urges the court to consider that the sentence by the trial court was harsh hence the same ought to be reduced.
13. Having noted so, I hold a different view that when a litigant is aggrieved by the determination of a court, then the right action should be that the aggrieved party appeals the said determination instead of seeking for revision. [See *Mukuru v Republic* (Criminal Revision E149 of 2023) [2024] KEHC 3764 (KLR) (18 April 2024) (Ruling)].
14. By the forgoing reasons, I find that the application is an abuse of the court process and as such, I dismiss the same.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 14TH DAY OF NOVEMBER 2024

J. N. ONYIEGO

JUDGE

