



Alex v Office of Director of Public Prosecution (ODPP) (Criminal Miscellaneous Application E035 of 2025) [2025] KEHC 11596 (KLR) (29 July 2025) (Ruling)

Neutral citation: [2025] KEHC 11596 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
CRIMINAL MISCELLANEOUS APPLICATION E035 OF 2025**

RL KORIR, J

JULY 29, 2025

BETWEEN

MAXIDEN MUCHIRI ALEX PETITIONER

AND

OFFICE OF DIRECTOR OF PUBLIC PROSECUTION (ODPP) ... RESPONDENT

RULING

1. Maxiden Muchiri Alex (Applicant) was charged with the offence of stealing a motorcycle contrary to Section 278 of the *Penal Code*. The particulars of the offence were that on the 3rd day of February 2025 at Mutino Location in Igambang'ombe Sub-County within Tharaka Nithi County, stole a motorcycle TVS STAR HLX 125 registration number KMDZ 547 Q valued at one hundred thousand shillings (Kshs.100,000/-) the property of Philemon Njagi Giakanu.
2. When the Applicant was first arraigned in court before Hon. D.A Ocharo (SPM) the court observed that he appeared young and directed that his age be assessed before plea was taken. In a report dated 5th February, 2025, the medical officer who examined the Applicant stated that he was 18 years old.
3. The Applicant took plea on 7th February, 2025 and accepted the charge. He was convicted on his own guilty plea, and sentenced to serve 24 months in prison. The court further directed that the motorcycle, which was recovered, be released to the owner.
4. The Applicant now seeks revision of his sentence. In his home made undated Application received in court on 5th May, 2025, the Applicant stated that his constitutional rights were violated because he was not provided an advocate yet he was young and faced a capital offence.
5. The Respondent opposed the Application. In submissions dated 14th July, 2025, the Respondents submitted that the right to legal representation at State expense was not an automatic right. That the Applicant's case did not meet the threshold for mandatory legal representation and that he suffered no prejudice. The Respondents asked the court to dismiss the Application.



Analysis and determination

6. This court’s revisionary jurisdiction provided for under Section 362 of the [Criminal Procedure Code](#) which 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. In the case of [Joseph Nduvi Mbuvi v Republic](#) (2019) eKLR, Odunga J. (as he then was) held that:-

“In my view, the revisionary jurisdiction of the High Court should only be invoked where there are glaring acts or omissions but should not be a substitute for an appeal. In other words, parties should not argue an appeal under the guise of a revision. It is for this reason that the decision whether or not to hear the parties or their advocates is discretionary save for where the orders intended to be made will prejudice the accused person. As was stated by the High Court of Malaysia in *Public Prosecutor v Muhari Bin Mohd Jani And Nother* [1996] 4 LRC 728 at 734, 735:-

“The powers of the High Court in revision are amply provided under Section 325 of the [Criminal Procedure Code](#) subject only to subsection (ii) and (iii) thereof. The object of revisionary powers of the High Court is to confer upon the High Court a kind of “paternal or supervisory jurisdiction in order to correct or prevent a miscarriage of justice. In a revision the main question to be considered is whether substantial justice has been done or will be done and whether any order made by the lower court should be interfered with in the interest of justice..... If we have been entrusted with the responsibility of a wide discretion, we should be the last to attempt to fetter that discretion..... This discretion, like all other judicial discretions ought, as far as practicable, to be left untrammelled and free, so as to be fairly exercised according to the exigencies of each case.”

8. I called for and examined the trial record. As already stated the Applicant took plea, pleaded guilty and was convicted on his own guilty plea. The record also shows that he was not represented.

9. The issue then is whether the Applicant’s constitutional right to legal representation was violated occasioning him injustice. The test to be applied is whether the Applicant suffered substantial injustice as a result of not being accorded legal representation.

10. Article 50 of the [Constitution](#) guarantees an accused person fair trial rights which include the right to legal representation as follows:-

“50(2) Every accused person has the right to a fair trial, which includes the right—

- (g) to choose, and be represented by, an advocate, and to be informed of this right promptly;
- (h) to have an advocate assigned to the accused person by the State and at State expense, if substantial injustice would otherwise result, and to be informed of this right promptly.”

11. In this case, the Applicant’s complaint is that he was not provided an advocate to assist him in the trial. While the right to legal representation under Article 50 (2) (g) cannot be limited, the provision of an



advocate at state expense was limited to cases where substantial injustice would result if an accused was not represented.

12. It is indeed significant to note that the issue of legal representation has been litigated all the way to the Supreme Court, where the court interpreted Article 50 of the Constitution .
13. In the case of Republic v Karisa Chengo & 2 Others (2017) eKLR, the court set out the parameters to be considered in determining what may constitute substantial injustice as follows:-
 1. The seriousness of the offence;
 - 2) The severity of the sentence;
 - 3) The ability of the accused person to prepare his own legal representation;
 - 4) Whether accused is a minor;
 - 5) The literacy of the accused and
 - 6) The complexity of the charge.
14. I am guided by the parameters of the above in the present application. To begin with, the Applicant was not charged with a capital offence as he states in his Application. He was charged under Section 278 A of the Penal Code provides:-

“ 278A. Stealing motor vehicle

If the thing stolen is a motor vehicle within the meaning of the Traffic Act (Cap. 403), the offender is liable to imprisonment for seven years.”
15. The penalty provided under section 278 A above cannot be said to be severe. He was liable to a maximum of 7 years’ imprisonment. His 24 months’ imprisonment was a lenient sentence.
16. Further, I have no doubt that the Applicant understood the proceedings. When the facts of the case were read to him, he confirmed that they were true. It was stated in the facts that he was caught in the act a fact which he confirmed.
17. It is my finding therefore that the Applicant, though unrepresented, did not suffer any substantial injustice or prejudice. I dismiss his argument that he deserved a revision of his sentence for lack of legal representation. It was not mandatory for the court to provide him legal representation since he was already an adult and was not charged with a capital offence or other serious felony attracting a heavy penalty or long sentence.
18. I have however, considered that the Applicant was a first offender and had barely turned 18. While not down playing his lack of judgement and indiscretion in committing the offence, I am persuaded that he has learnt his lesson in jail. I have also considered that the stolen motor cycle was recovered and returned to the owner.
19. Taking into consideration all circumstances, I will temper justice with mercy and order that the Applicant serve the remainder of his sentence on Community Service Order at the local Chief’s office. The Probation Officer shall provide the necessary guidance and support.

Orders accordingly.

RULING DELIVERED, DATED AND SIGNED AT CHUKA THIS 29TH DAY OF JULY, 2025.

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R. LAGAT-KORIR

JUDGE

Ruling delivered in the presence of the Applicant acting in person and Ms Rukunga for the State; Muriuki (Court Assistant).

