



**Muriithi v Republic (Criminal Revision E021 of 2023)
[2024] KEHC 9795 (KLR) (31 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9795 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CRIMINAL REVISION E021 OF 2023
DKN MAGARE, J
JULY 31, 2024**

BETWEEN

AMOS KIBOCHA MURIITHI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. This is a Ruling over a Notice of Motion application by the Applicant seeking to review sentence.
2. The application seeks revision of the sentence to a noncustodial sentence for the remainder of the term.
3. The application is supported by the Affidavit of the Applicant and it was deposited in material as follows:
 - a. The court to apply sentencing guidelines.
 - b. The Applicant has served 11 months in prison.
 - c. Prays for noncustodial sentence.

Analysis

4. The court has considered the application and submissions filed in court. The issue is whether the sentence should be revised to a lessor one.
5. The revisionary powers of this court are set out under the law. Under Section 362 of the Criminal Procedure Code it is provided as follows:

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.

6. Further, Section 367 of the *Criminal Procedure Code*, on the other hand, provides as hereunder:

When a case is revised by the High Court it shall certify its decision or order to the court by which the sentence or order so revised was recorded or passed, and the court to which the decision or order is so certified shall thereupon make such orders as are conformable to the decision so certified, and, if necessary, the record shall be amended in accordance therewith.

7. I note that the Applicant was charged with the offence of malicious damage to property contrary to Section 339(1) of the *Penal Code*.

8. The particulars of the offence were that on 6th March 2023, the Applicant at Kiangacha village in Tetu Sub-county willfully and unlawfully damaged motor vehicle registration No. KDH 732U make Nissan Note by hitting the front and rear windscreen left and right side mirrors, left and right window glasses and entire body valued at Kshs. 270,000/=, the property of Charles Wambugu.

9. The trial court considered the case and convicted the Applicant and sentenced him to serve 3 years imprisonment.

10. Aggrieved the Applicant filed for revision of the sentence only. There was no appeal on conviction.

11. In the High Court of Malaysia in *Public Prosecutor vs. Muhari bin Mohd Jani and Another* [1996] 4 LRC 728 at 734, 735 it was stated as doth:

“The powers of the High Court in revision are amply provided under section 325 of the Criminal Procedure Code subject only to subsections (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”

12. I have also considered the probation report filed in court on 23/7/2024. I have to consider whether there is injustice on committing the Applicant to three years imprisonment so that the Applicant deserves a lesser sentence. He prayed for a non-custodial sentence.

13. The Court of Appeal in the case of *Thomas Mwambu Wenyi – vs- Republic* (2017) eKLR stated as follows: -

“A sentence imposed on an accused person must be commensurate with the blame worthiness of the offender and that the court should look at the facts and circumstances of the case in its entirety before settling for any given sentence”.

14. I have perused the Sentencing Guidelines. The Supreme Court has propounded them in *Francis Karioko Muruatetu & Another v Republic* (2017) eKLR. The following are guidelines with regard to mitigating factors before sentencing.

(a) age of the offender;



- (b) being a first offender;
 - (c) whether the offender pleaded guilty;
 - (d) character and record of the offender;
 - (e) commission of the offence in response to gender-based violence;
 - (f) remorsefulness of the offender;
 - (g) the possibility of reform and social re-adaptation of the offender;
 - (h) any other factor that the Court considers relevant.
15. I must however consider that the mitigation factors by no way replace judicial discretion as observed by the Supreme Court in the Muruatetu Case (supra).
 16. In my evaluation, I note the Applicant was a first offender. However, in my view, the learned magistrate properly committed the Applicant to 3 years imprisonment. From the probation report, it is clear that the trial court's conviction was well based as the court correctly observed that the Applicant was not remorseful.
 17. In the circumstances, I am unable to find reason to interfere with the discretion of the trial magistrate who sentenced the Applicant for 3 years imprisonment. The court did the best it could to give a just punishment in accordance with the law.
 18. I consequently decline the prayer for a noncustodial sentence or lesser sentence. The fact that he pleaded guilty was considered in the sentence. There is no illegality in the sentence.
 19. The applicant was sentenced to 3-years imprisonment. It is not indicated when the sentence was to start running. Section 333 (2) of the *Criminal Procedure Code* provides that regard be had to time spent in custody. Section 333 of the Criminal Procedure Code provides as follows: -
 1. A warrant under the hand of the judge or magistrate by whom a person is sentenced to imprisonment, ordering that the sentence shall be carried out in any prison within Kenya, shall be issued by the sentencing judge or magistrate, and shall be full authority to the officer in charge of the prison and to all other persons for carrying into effect the sentence described in the warrant, not being a sentence of death.
 2. Subject to the provisions of section 38 of the *Penal Code* (Cap 63) every sentence shall be deemed to commence from, and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this Code. Provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.
 20. In the circumstances the term of 3 years shall run from the date of arrest, that is, 7/3/2023. Save as the foregoing the rest of the application is dismissed.

Order

21. I therefore make the following orders: -
 - a. The sentence given by the court of 3 years remains save to correct the same to the extent that the sentence should run from the date of arrest on 7/3/2023.



- b. The rest of the Application for review of the sentence in Nyeri CMCRC No. 333 of 2023 is hereby dismissed.
- c. The file is closed.

DELIVERED, DATED AND SIGNED AT NYERI ON THIS 31ST DAY OF JULY, 2024. RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.

KIZITO MAGARE

JUDGE

In the presence of:-

Applicant in person

Mwakio for the Respondent

Court Assistant – Jerusha/Jedidah

