



REPUBLIC OF KENYA



KENYA LAW
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**Mokoro v Republic (Criminal Revision E155 of 2024)
[2024] KEHC 10053 (KLR) (12 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10053 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E155 OF 2024
RN NYAKUNDI, J
AUGUST 12, 2024**

BETWEEN

BRIAN MOKORO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Brian Mokoro was charged with the offence of cheating contrary to section 315 of the *Penal code*. The particulars of the offence are that on diverse dated between 27th May, 2021 and 28th July, 2021 within the republic of Kenya, by means of a fraudulent trick obtained ksh 680,560 and a HP Laptop valued at ksh 50,000/=, all valued at ksh 730,560/= from Gladys Jepkoech Kipkorir.
2. The applicant pleaded guilty to the offence on 4th September, 2023 and the applicant was found guilty and sentence to 3 years' imprisonment.
3. The applicant is before this court for sentence review on the strength of a sentence review report dated 25th March, 2024. The report indicates that the applicant is a graduate of criminology. Before his arrest, he was managing his father's properties which include rental houses and restaurants. He was in a relationship with the complainant and the two have a three-year old child. The inmate's step mother is ready to receive and support him. His girlfriend, the complainant has visited him. His family is ready to receive him and support him till he gets back on his feet. Of significance, report pointed out that the complainant has forgiven him and she has no objection towards the sentence review.
4. The Supreme court in the *Francis Muruatetu* case at paragraph 71 amended the guidelines in respect of re-hearing sentence for the conviction of murder charge to include: -
 - 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.
5. The role of the court is to mete a just punishment that is appropriate to the crime and meets the social circumstances thereof. The Judiciary Policy on Sentencing has the following objectives:

“Sentences are imposed to meet the following objectives:

- 1. Retribution: To punish the offender for his/her criminal conduct in a just manner.
 - 2. Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
 - 3. Rehabilitation: To enable the offender reform from his criminal disposition and become a law abiding person.
 - 4. Restorative justice: To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims’, communities’ and offenders’ needs and justice demands that these are met. Further, to promote a sense of responsibility through the offender’s contribution towards meeting the victims’ needs.
 - 5. Community protection: To protect the community by incapacitating the offender.
 - 6. Denunciation: To communicate the community’s condemnation of the criminal conduct.”
6. I take note that there must have been a victim-offender mediation for the complainant to arrive at a decision to forgive the applicant herein. He has shown remorse and served 6 months of his sentence in custody. In my mind, where parties have embraced reconciliation, the court should encourage the same and allow the parties to solve any underlying issues. This court is clothed with wide powers under article 165 (6) and (7) of the *Constitution* and section 362 as read with section 364 of the *CPC* to look at the legality of the order on sentence by the trial court. Just a glance of it shows clear mitigation factors which reduces the seriousness of the offence or the culpability of the applicant. Again, with no special order of priority they include the following:
- a. Youth of the applicant
 - b. Immaturity of the applicant
 - c. The previous good character of the applicant
 - d. Restitution of part of the stolen property to the complainant



- e. A plea of guilty entered by the applicant
 - f. Cooperation with the police by the applicant after the commission of the offence
 - g. Expression of remorse by the applicant before the trial court
7. In the upshot and in considering the objectives of sentencing in totality, I am inclined to place the applicant on a probation sentence period of eighteen months. Monthly reports shall be filed in court by the supervisor of the applicant through the probation officer. The essence of it is to achieve the effectiveness of this non-custodial sentence and that any breach of any conditions by the applicant shall attract cancellation of the community service order and have the sentence reverted to custodial sanctions.

SIGNED, DATE AND DELIVERED AT ELDORET THIS 12TH DAY OF AUGUST 2024.

.....

R. NYAKUNDI

JUDGE

