



**Ronoh v Republic (Miscellaneous Criminal Application E029 of 2023)
[2024] KEHC 11296 (KLR) (25 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 11296 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
MISCELLANEOUS CRIMINAL APPLICATION E029 OF 2023**

**RL KORIR, J
SEPTEMBER 25, 2024**

BETWEEN

ENOCK KIPKIRUI RONOH APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant was charged with two counts of stealing contrary to section 268 as read with section 275 of the *Penal Code*. He was convicted on his own plea of guilty and sentenced to serve 5 years for count 1 and count 2 and the sentences were to run concurrently. He was sentenced on 1st March 2022.
2. The Applicant has now applied for revision of his sentence. In his home-made Application dubbed “Memorandum of Sentence Review” filed on 15th June 2023, the Applicant stated that he pleaded guilty and begged for forgiveness at the earliest opportunity. That he had since rectified his behavior and acquired carpentry skills while in prison; that he was a father of two and prayed to be reunited with his young family.

Applicant’s submissions

3. The Applicant filed written submissions on 15th July 2024 where he stated that he was a father of two toddlers who were being taken care of by his relatives and good Samaritans after their mother abandoned them after he was convicted and imprisoned. That he lost his mother due to psychological torture and depression after his incarceration.
4. It was the Applicant’s submission that while in prison, he undertook several rehabilitation courses and other upright living practice courses including carpentry, joinery and upholstery.
5. The Applicant submitted that he was fully reformed and was now a born again Christian and wanted to be given a second chance to re-integrate back into the society.



The State's/Respondent's submissions

6. The Respondent submitted that the Applicant was given a concurrent sentence of 5 years after the trial court noted that the offence was rampant. That the sentence was not excessive and that the offence of stealing should be deterred.

Analysis and determination

7. The penalty for the offence of stealing is contained in section 275 of the Penal Code which provides:-
Any person who steals anything capable of being stolen is guilty of the felony termed theft and is liable, unless owing to the circumstances of the theft or the nature of the thing stolen some other punishment is provided, to imprisonment for three years.
8. The trial court sentenced the Applicant to 5 years each for both counts. In meting the sentence, the trial court observed that it had sentenced the Applicant to 5 years each for the two counts because the offence was rampant.
9. The Applicant asked this court to reduce his sentence. In asking this, the Applicant asked the court to interfere with the trial court's sentence. The principles involved in interference of a trial court's sentence were stated in *Ogolla s/o Owuor v R* [1954] EACA 270, where the court held:-

“The Court does not alter a sentence unless the trial Judge has acted upon wrong principles or overlooked some material factors. This was further echoed in the dictum of the cases in *R v Shershowsky* [1912] CCA TLR 263 as emphasized in *Shadrack Kipkoech Kogo v R* Criminal Appeal No. 253 of 2003 thus “Sentence is essentially an exercise of discretion by the trial Court and for this Court to interfere it must be shown that in passing the sentence, the sentencing Court took into account an irrelevance factor or that a wrong principle was applied or that short of these, the sentence itself is so excessive and therefore an error of principle must be interfered.”
10. From the above, it is clear that the trial court issued a 5 year sentence for an offence which the law clearly provided for a maximum of 3 years. This in my view was an illegality that invited this court's intervention.
11. I have noted that the Applicant thought that he had been sentenced to 10 years for the two counts of stealing. The trial court was clear that the 5 year sentences would run concurrently which meant that the Applicant would serve a cumulative of 5 years for the two counts and not the 10 years he stated.
12. This court has also noted the Applicant's efforts towards reform through attending various courses. He attached certificates being Certificate of New Life Behaviour dated 31st July 2023, Certificate on the Focus on Family dated 19th June 2023 and the Certificate of Health Education dated 20th November 2023.
13. I have to agree with the trial court and the Respondent that this offence has become rampant and needed to be nipped in the bud. In as much as I sympathize with the Applicant, it is my finding that the Applicant should serve a custodial sentence as prescribed by the law.
14. In the premises therefore, I vacate the 5 year sentence and substitute it with a 3 year sentence for count 1 and a 3 year sentence for count 2. The sentences are to run concurrently and shall be deemed to run from the date of sentence in the trial court.

Orders accordingly.



RULING DELIVERED, DATED AND SIGNED THIS 25TH DAY OF SEPTEMBER, 2024.

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R. LAGAT-KORIR

JUDGE

Ruling delivered in the presence of the Applicant acting in person, Mr Waweru for the Respondent and Siele (Court Assistant).

