



**Muli v Republic (Criminal Revision E008 of 2024)  
[2024] KEHC 13789 (KLR) (31 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13789 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
CRIMINAL REVISION E008 OF 2024  
MW MUIGAI, J  
OCTOBER 31, 2024**

**BETWEEN**

**MAUREEN MWENDE MULI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

**Background**

1. The accused person was charged with two counts. First count was stealing, second count was conspiracy to commit a felony.
2. The information that led to the arraignment of the accused person before the court was as follows:

**Count I: Conspiracy to commit a felony contrary to Section 393 of the Penal Code.**

Particulars of two offences are as follows:

1.Maureen Mwende Muli 2. Bendetta Mutio 3. Janet Musyoka: On the 30<sup>th</sup> day of August,2023 at Masii Market, utithini Sub-location, Masii Location, Mwala Sub- County within Machakos County, jointly with others not before Court, conspired to steal kshs 206, 780 from Mpesa account No 0728363504 and Kenya Commercial bank Account No 1115811126 in the name of Titus Lee Kasiu.

**Count II: Stealing contrary to Section 268 (1) as read with Section 275 of the Penal Code.**

Particulars of two offences are as follows:

Maureen Mwende Muli, Bendetta Mutio, Janet Musyoka: On the 30<sup>th</sup> day of August,2023 at Masii Market, utithini Sub-location, Masii Location, Mwala Sub- County within Machakos County, stole one mobile phone make ITEL, Kenya identity card No 1699954 and cash kshs 206,780 the property of Titus Lee kasiu .



3. The charge was read to the accused and the same explained to him and she pleaded guilty to the offence and a plea of Guilty was entered for the accused person (s).

### **Trial Court Sentencing**

4. The Trial Court's conviction and sentenced her to serve 2 years imprisonment on Count 1 and 2. Sentences to run concurrently.

### **The Revision**

5. Dissatisfied by the judgment on the sentence, the accused person vide a Notice of review filed in court on 25<sup>th</sup> January 2024 wherein, the Applicant sought *inter alia* orders that:
  - a. The application for review of the two years imprisonment be granted
  - b. That she be granted non-custodial sentence.
  - c. That the court be pleased to grant any other orders it may deem fit under the circumstances.
6. The application was supported by Supporting Affidavit sworn by Maureen Mwende Muli the Applicant herein, wherein she deposed that she was remorseful and deeply regretted her action. That prior to her arrest she was the bread winner of her family, a single mother of two children. That she prays for a non-custodial sentence to enable her take care of the little children whose psycho social development may be affected by her absence
7. The matter was canvassed by written submissions.

### **Submissions**

#### **The Applicant's written submissions**

8. The Applicant in his submissions filed in court on 19<sup>th</sup> September,2024 submitted that she was very remorseful and deeply sorry for her actions, she pleaded guilty and was a first offender with no history of crime. She was totally reformed mother of two children and the breadwinner. She has learnt so many skills during her stay in prison that will help her in her daily life. She has learnt the value of freedom the hard way and promises to always abide by the law
9. The applicant prayed for non-custodial sentence to allow her time and parental care to her young children

#### **Respondent's Submissions**

10. The Respondent in its submissions dated 21<sup>st</sup> May ,2024 wherein Mr. Mwongera, state counsel relied on the Court of Appeal case of *Bernard Kimani Gacheru v Republic* [2002] eKLR, restated that:

“It is now settled law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account, some wrong material, or acted on a wrong principle. Even if, the Appellate Court feels that the sentence is heavy and that the Appellate Court might itself not have passed that sentence, these alone are not



sufficient grounds for interfering with the discretion of the trial court on sentence unless, anyone of the matters already stated is shown to exist.”

11. Further, state counsel relied on the case of *Mokela v The state* (135/11) [2011] ZASCA 166 to support his position on that sentencing is within the discretion of the court.
12. He also relied on the case of *Ogolla s/o Owuor v Republic* (1954) EACA 270 to buttress the point that the court does not alter a sentence unless the trial judge has acted on the wrong principles or overlooked some material factors.
13. Consequently, counsel submitted that the sentence was appropriate and urged the court to uphold the sentence imposed by the trial court.

### **Determination/Analysis**

14. I have considered the application herein as well as the submissions by both the applicants and the respondent.
15. The jurisdiction of this court in the exercise of its supervisory powers is provided in the Constitution and statutory provisions
16. .
17. Article 165(6) and (7) of the [Constitution](#) of Kenya 2010 provides as follows: -
  - “(6) the High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial functions but not over a superior court.
  - (7) for purposes of clause (6) the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6) and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.”
18. Section 362 of the [Criminal Procedure Code](#) (Cap 75) on the other hand provides as follows: -
  - “362. The High Court may call 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 subordinate court”.
19. The upshot of the above provisions is that the High court is clothed with the wide powers of review and/or revision of the proceedings and decisions of the subordinate court when such decisions were made without legal piety. Since these are criminal proceedings, section 362 of the [Criminal Procedure Code](#) was correctly relied upon by the Applicant.
20. The issue that arises for determination is whether the application for revision of sentence is merited.
21. It is not in contention that the Applicant pleaded guilty to each count and the trial magistrate during sentence noted that the probation report had recommended for a non-custodial sentence but he had a contrary view being that the having considered the facts presented that the 1<sup>st</sup> accused was the mastermind for the commission of the offence and deserved a custodial sentence. He proceeded to sentence her to two years in prison which sentence was to run concurrently.



22. Sentencing is a discretion of the court of law but the court should look at the facts and the circumstances in the entirety so as to arrive at an appropriate sentence. The Court of Appeal in *Thomas Mwamba Wanyi v Republic* (2017) eKLR cited the decision of the Supreme Court of India in *Alister Antony Pereira Vs The state of Maharashtra* at paragraph 70 – 71 where the court held;

“Sentencing is an important task in the matter of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate and proportionate sentences commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straight jacket formula for sentencing an accused person on proof of crime. The courts have evolved certain principles; twin objective of sentencing policy is deterrence and correction. What sentence would meet the end of justice depends on the facts and circumstance of each case and the courts must keep in mind the gravity of crime, motive for the crime, nature of the offence and all the attendant circumstances. The principle of proportionality by sentencing a crime done is well entrenched in criminal jurisprudence. As a matter of law, proportion between crime and punishment must bear relevant influence in determining the sentence of the crime doer. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence.”

23. This Court is of the view that the sentence imposed on the accused was appropriate.
24. I therefore find that this application is not meritorious and I hereby dismiss it upholding the sentence meted by the Trial Court.

It is so ordered.

**RULING DELIVERED, SIGNED & DATED IN OPEN COURT ON 31/10/2024 IN MACHAKOS HIGH COURT (VIRTUAL/PHYSICAL CONFERENCE).**

**M.W. MUIGAI**

**JUDGE**

