



**Lengai v Republic (Criminal Revision E042 of 2024)  
[2024] KEHC 14778 (KLR) (22 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14778 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KABARNET  
CRIMINAL REVISION E042 OF 2024  
RB NGETICH, J  
NOVEMBER 22, 2024**

**BETWEEN**

**FIBIAN LENGAI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant was charged with the offence of Stealing stock contrary to section 278 of the [Penal Code](#). The particulars of the charge were that the accused on the 1<sup>st</sup> day of October, 2023 at around 1800Hrs at Kaptombes Sub-Location Kapkuikui Location Baringo South Sub- County within Baringo County, jointly with others not before court stole 10 goats all valued at Kshs.60,000/= the property of Moses Cheptiony Chelimo.
2. The Applicant pleaded not guilty when he first appeared in court for plea on the 16<sup>th</sup> October, 2023 but he later changed plea on the 22<sup>nd</sup> January, 2024 and he was convicted on his own plea of guilty. On 20<sup>th</sup> of February, 2024 after considering the Presentence report sentenced the trial court sentenced the applicant to 4 years imprisonment.
3. The applicant has now approached this court seeking review of his sentence to probation for the remaining period of sentence. He states that he is the sole bread winner of a young family. He says he is remorseful and the complainant has recovered his stock and has forgiven him; that they have fully reconciled. He states that he has now reformed, saved after studying the bible and attending biblical study course.
4. When the matter came up for hearing on the 26<sup>th</sup> day of September, 2024, the applicant stated that he is remaining with 1 year and 8 months.



## Social Inquiry Report

5. From social inquiry report, the Applicant dropped out of school in class 6 due to parental directions to look after the family animals. He was married with one child but his parent's in-law took their daughter back. The Applicant states that he does not use any drug and substance.
6. The Applicant's father is not opposed to non-custodial sentence but he did not show any interest in rehabilitating the applicant in the community. From the report, the Applicant's father is opposed to the idea of holding a reconciliation meeting with the victim or even compensating the victim; the applicant's parents only want their son back home.
7. The Applicant admits the offence as charged and says he got involved in crime because his father got married at Ngorokai village far from their home and neglected them and his mother. He prays for non-custodial sentence so that he can assist his parents, grandmother and his child. He says he stole far away from home thus the home environment is very good.
8. The victim works as a teacher at Elchurai Primary School. He is still living in fear over what the inmate did to him. He opposed to non-custodial sentence on ground that reconciliation has not taken place and the inmate had promised to revenge once released. He added that he was only able to receive one goat and nine are still missing and he has not received any compensation from the Applicant's family.
9. The local administration attributes the applicant's criminality to negative peer influence, desire for quick money and not willing to work so that he can earn a living and lack of parental guidance. He is opposed to revision of sentence on ground that the applicant and his family are not willing to compensate the victim and reconcile. He is of the view that the applicant could be placed on community rehabilitation sentence once he compensates the victim and reconciled.

## Determination

10. The application herein invokes the revisional jurisdiction of this court which gives the court powers, in appropriate cases, to review and vary any orders, decision or sentence passed by the trial court if the court was satisfied that the impugned order, decision or sentence was illegal or was a product of an error or impropriety on the part of the trial court. If the court was so satisfied, the law mandated it to make appropriate orders to correct the impugned order, decision or sentence and align it with the law. The above is the import of Section 362 as read with Section 364 of the [Criminal Procedure Code](#).
11. The objectives of sentencing are outlined in the 2023 [Judiciary of Kenya Sentencing Policy Guidelines](#) at page 15, paragraph 4.1 as follows:

Retribution: To punish the offender for his/her criminal conduct in a just manner.

Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.

Rehabilitation: To enable the offender reform from his criminal disposition and become a law-abiding person.

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.

Community protection: To protect the community by incapacitating the offender.



Denunciation: To communicate the community's condemnation of the criminal conduct.”

12. In view of the above, I have considered sentiments by the local administration, the victim and accused's parents. From the social inquiry report, the applicant and his parents are not keen on restorative justice; they are only interested in the applicant being released but not concerned with mitigating the effect of the applicant's criminate act on the complainant. Justice demand that the court balances the interests of the complainant/victim and the accused/applicant. In view of the above, I decline to revise the remaining sentence. The applicant may renew application for review later if circumstances change.

13. Final Orders: -

I hereby decline to revise the remaining sentence.

**RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 22<sup>ND</sup> DAY OF NOVEMBER 2024.**

**RACHEL NGETICH**

**JUDGE**

In the presence of:

- CA Elvis

- Ms.Ratemo for state

- Applicant

