



**Rotich v Republic (Criminal Revision E056 of 2024)
[2024] KEHC 14734 (KLR) (22 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14734 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL REVISION E056 OF 2024
RB NGETICH, J
NOVEMBER 22, 2024**

BETWEEN

KIPROP AMDANY ROTICH APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant Kipro Amdany Rotich charged with the offence of Stealing stock contrary to section 278 of the Penal Code. The particulars of the charge were that the accused and another on the 6th day of June,2023 at about 1800Hours in Ossen Location Baringo North Sub- County within Baringo County, stole one Freshian cow valued at Kshs.50,000/= the property of Isaac Kipruto Cherutich.
2. The alternative count was the offence of Handling Stolen property contrary to section 322 of the Penal Code. The particulars were that the applicant and another on the 7th day of June,2023 in Barwessa Area in Baringo North Sub-County within Baringo County otherwise than in the course of stealing, dishonestly received or retained one Freshian cow valued at Kshs.50,000/= having reasons to believe it to be stolen property.
3. The Applicant admitted the charge and he was convicted on his own plea of guilty and on the 12th July,2023 after considering the Presentence report the trial court sentenced the applicant to serve 4 years imprisonment.
4. The applicant has now approached this court vide a notice of motion application brought under the provisions of Article 50(2)(p)(q) of the Constitution of Kenya seeking review of sentence. The application is supported by an affidavit sworn by the Applicant who avers that he has reformed and is repentant; that he has trained and attained grade 3 in carpentry which will help him earn a living if released.



5. When the matter came up for hearing on the 26th day of September, 2024, the applicant informed the court he is now remaining with 17 months to serve.

Social Inquiry Report

6. From social inquiry report filed the applicant sat for KCPE and attained 214 marks out of 500 but did not proceed to secondary school out of his own volition. He later started working as a boda boda rider up to the point of his arrest. He is single and he does not have any parental responsibility.
7. The applicant's father was against non-custodial sentence but he has now decided to forgive the inmate following a talk he had with the applicant when he visited him in prison. He stated that the applicant promised him that he would change his ways and keep away from negative peers. He prayed that the applicant be released to serve a non-custodial sentence and stated that the applicant now has a house on their ancestral land and if released he will help him settle at home.
8. The Applicant admits to the offence and stated that his co-accused called him and asked him to help take a cow to Barwessa for sale. When they got to the market they were arrested by the market administrator who had been tipped off over stolen cow. He further admits that he had been charged *vide* CR EL75/2023 and was convicted and sentenced to serve 6 probation sentence but he committed this subsequent offence before he completed the 6 months under probation.
9. Efforts to reach the complainant through the local administration and the family of the Applicant were futile. From the social inquiry, the cow was recovered and returned to the complainant when the matter was in the lower court.
10. The local administration indicated that the community is not opposed to noncustodial sentence if the applicant commits to keep off crime.

Determination

11. The application 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*.
12. 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.”

13. I have taken into consideration the objectives of sentence as set out above and the sentiments given by the people interviewed by the probation officer. I take note of the fact that the applicant was previously charged, convicted and sentenced to serve a probation sentence for 6 months but he reoffended before completing probation sentence. In view of the fact that the applicant is a repeat offender and had been given a chance to serve on probation, I am inclined to decline prayer for revision of sentence.

14 Final order: -

I hereby decline to revise sentence imposed by the trial court.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 22ND DAY OF NOVEMBER 2024.

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RACHEL NGETICH

JUDGE

In the presence of:

* CA Elvis

* Ms. Ratemo for state

* Applicant present

