



REPUBLIC OF KENYA



**KENYA LAW**  
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**Otunga v Republic (Criminal Revision E160 of 2022)  
[2023] KEHC 686 (KLR) (30 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 686 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIVASHA  
CRIMINAL REVISION E160 OF 2022  
GL NZIOKA, J  
JANUARY 30, 2023**

**BETWEEN**

**ERICK OBADIA OTUNGA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant was arraigned before the Chief Magistrate's Court at Naivasha charged vide criminal case No. E939 of 2022 with the offence of stealing a motor vehicle contrary to section 278A of the [Penal Code](#). He pleaded guilty, was convicted and sentence to serve a term of four (4) years imprisonment.
2. By a notice of motion application filed in court on October 12, 2021, the applicant is seeking for sentence review for the sentence to be reduced or converted into a non-custodial sentence, or the court grant any other relief it may deem appropriate.
3. The application is supported by the applicant's affidavit in which he avers as here below reproduced: -
  - a. That, I was charged with the offence of stealing a motor vehicle section 278 (a) of the [Penal Code](#).
  - b. That, I was sentenced to serve four (4) years imprisonment on August 4, 2022 by Hon. Eunice K. Aoma of the Chief Magistrate's Court at Naivasha.
  - c. That, I pleaded guilty to the above charges.
  - d. That, I am a pauper hence I plead with this Honourable court to waive my court fees.
  - e. That, I confirm that all I have deposed here is all true and correct to the best of my knowledge and belief.



4. He further relies on a document filed under the heading of: “Memorandum of Sentence Review” in which he states: -
  - a. That, I am a first offender.
  - b. That, I pray that this honourable court allows me to spend the remaining period of my sentence under Community Service Order or set me at liberty.
  - c. That, I am remorseful of my offence and have learnt to be a law abiding citizen.
  - d. That, I am from a poor but humble family background.
  - e. That, I did not give proper mitigation during my sentencing and hence would like to present during the hearing and determination of this application.
  - f. That, I am the sole breadwinner of my family and my incarceration has placed them in a very difficult situation.
  - g. That, I humbly beg this Honourable court for leniency and reduce my four (4) years sentence.
  - h. That, I am not appealing against sentence and conviction but applying for a review of sentence.
5. Be that as it may, when the matter came up for hearing on the December 1, 2022, the learned counsel for the Respondent informed the court that they were not filing any response to the application.
6. Having have considered the application in light of the material placed before the court, I find that, the applicant was charged with the offence provided for under section 278A of the *Penal Code*. The sentence provided for the offence is an imprisonment term of seven (7) years. He was sentenced to four (4) years imprisonment, therefore, prima facie the sentence meted out is lawful, correct, proper and legal. As such it cannot therefore be a subject of revision under section 362 and 364 of the *Criminal Procedure Code*.
7. However, taking into account the facts that the applicant pleaded guilty to the charge and therefore did not waste the court’s scarce time and that he was treated as a first offender. Further, the pre-sentence report indicates that he is a young man of 25 years, with a young family and an ailing parent. That, he had a long relationship with the complainant.
8. In the given circumstances and considering the aforesaid sentence for the offence, the custodial sentence meted out of four (4) years is rather harsh for a first offender. The purpose of sentencing should not just be deterrence but also rehabilitative. Indeed, a deterrence sentence is called for where there is evidence of prevalence of an offence and/or the offender is a habitual or serial offender. There was no evidence of the same herein.
9. However, I note that the stolen motor vehicle was not recovered, but the same should have been insured and therefore the complainant should be compensated by the Insurance company. But that does not of course mean, the court condones the behaviour of the applicant. He should have disclosed where the vehicle went to.
10. Be that, as it were, I am inclined to exercise the powers given to the court under section 364 of the *Criminal Procedure Code* and revise the sentence herein. I therefore reduce the sentence meted out from a period of four years to a period of two and a half years from the date of arrest. The relevant records shall be amended accordingly.
11. It is so ordered.



DATED, DELIVERED AND SIGNED ON THIS 30<sup>TH</sup> DAY OF JANUARY, 2023

GRACE L NZIOKA

JUDGE

**In the presence of;**

Applicant present on call virtually

Mr. Ndiema for the Respondent

**Ms Ogutu Court Assistant**

