



REPUBLIC OF KENYA



KENYA LAW
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**Muhindi v Republic (Criminal Revision E299 of 2022)
[2023] KEHC 444 (KLR) (23 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 444 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CRIMINAL REVISION E299 OF 2022
JN ONYIEGO, J
JANUARY 23, 2023**

BETWEEN

JOSEPH MUSAU MUHINDI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged with the offence of burglary contrary to section 304(2) and stealing contrary to section 279(b) of the *penal code*. Particulars were that on the 22nd day of March 2022 at about 22hrs at Bahati village in Taveta sub county within Taita Taveta county jointly with others not before the court broke and entered into the dwelling house of Margaret Mukami with intent to steal therein and did steal one AzuriTV 24 inches, one glass coffee table all valued at Kshs 14500 the property of Margaret Mukaru.
2. In the alternative, he was charged with the offence of handling stolen goods c/s to section 322(2) as read with section 322(2) of the *penal code*. Particulars were that on the 22nd day of March 2022 at about 0730 hrs at Bahati village in Taveta sub-county within Taita Taveta County otherwise than in the course of stealing, dishonestly retained A Zuri television 24 inches and a glass table valued at Kshs 14500 knowingly or having reasons to believe to be stolen goods.
3. Upon taking plea, the applicant denied the charge. The matter then proceeded to full trial. At the close of the hearing, the court found the applicant not guilty of the main count. He however found him guilty of the alternative count for handling stolen goods. Consequently, he was sentenced to serve 7 years' imprisonment.
4. Dissatisfied with the sentence imposed, the applicant moved to this court vide a notice of motion filed on October 4, 2022 seeking revision of the sentence in question on grounds that; he is a first offender; he be sentenced to anon custodial or suspended sentence and; that the sentence imposed was excessive.



5. It is trite law that this court is empowered to exercise its supervisory powers under article 165(6) and (7) of *the Constitution* to call for a subordinate court's record so as to make any directions or order to ensure fair administration of justice. Besides, under section 362 and 364 of the *criminal procedure code*, the High Court is empowered to call upon and examine the record of any criminal proceedings from a subordinate court so as to satisfy itself as to the correctness, legality, propriety on sentence passed or order made and on the regularity of the proceedings.
6. I am alive to the fact that sentencing is at the discretion of the trial court. However, this court in its appellate capacity is empowered to intervene where the sentence meted out is illegal or excessive. See *Shadrack Kipkoech Kogo =Versus= Republic* Criminal Appeal Number 25 of 2003 where the Court of Appeal held that sentencing is at the discretion of the trial court and that an appellate court can only interfere or intervene if it is shown that the trial court took into consideration irrelevant factors, applied wrong principles of the law or that the sentence was excessive and therefore an error.
7. When the matter came up for hearing, the applicant adopted the content contained in the affidavit in support of his application. He went further to state that the sentence herein to run concurrently with the sentence he is serving under Criminal revision no E 300 of 2022.
8. In response, the respondent through Sirima prosecution counsel opposed the prayer seeking to have the sentence herein to run concurrently with the sentence being challenged under Cr.rev. No E300 of 2022. Learned counsel contended that the sentence imposed was legal and proper.
9. Having considered the nature of the offence committed, the value of the property stolen and further, having taken into account the fact that the stolen item was recovered, the sentence of 7years is excessive in the circumstances. Accordingly, am persuaded to substitute the sentence of 7years with 2 years' imprisonment. The sentence to start running from the date he was sentenced by the trial court. As to whether the sentence herein should run concurrently with the one being challenged under file No. E 300 of 2022, the same is not applicable as the two are independent of each other given that the complainants are different and the offences were committed at different times. Naturally, the two shall run consecutively.
10. However, I have noted that throughout the trial, the applicant was in remand custody until the date he was sentenced on August 15, 2022 translating to 4 months and 22 days. Unfortunately, the trial court did not take into account that period in compliance with section 333(2) of the *CPC*. Accordingly, am inclined to direct that the said period spent in remand custody be taken into account when computing sentence.
- 11 Right of Appeal 14 days

DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 23RD DAY OF JANUARY 2023.

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J.N.ONYIEGO

JUDGE

