



REPUBLIC OF KENYA



**Muhindi v Republic (Criminal Revision E300 of 2022)
[2023] KEHC 435 (KLR) (23 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 435 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CRIMINAL REVISION E300 OF 2022
JN ONYIEGO, J
JANUARY 23, 2023**

BETWEEN

JOSEPH MUASAU MUHINDI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was on 23rd March arraigned before the Taveta pms court 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 19th day of March 2022 at unknown time of the night at California village in Taveta sub county within Taita Taveta County jointly with others not before the court broke and entered an incomplete structure namely a house of Peninah Kangara with intent to steal therein and did steal therein three panel doors all valued at Kshs 21,900 the property of Peninah Kangari.
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 on September 6, 2022.
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; the sentence imposed was excessive and that the period served in remand custody was not taken into account.

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.
8. In response, the respondent through Sirima prosecution counsel opposed the application thus stating that the sentence imposed was appropriate.
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.
10. Regarding the failure by the trial court to take into account the period spent in remand custody, the record is clear. The applicant took plea on March 23, 2022 and remained in custody up to September 6, 2022 when he was sentenced translating to 5 months and 13 days. Pursuant to Section 333(2) of the CPC, that period ought to have been taken into account. Accordingly, the period spent in remand custody shall be taken into account when computing sentence.

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

