



**Kilonzo v Republic (Criminal Revision E327 of 2022)
[2023] KEHC 448 (KLR) (19 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 448 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CRIMINAL REVISION E327 OF 2022
JN ONYIEGO, J
JANUARY 19, 2023**

BETWEEN

MAKAU KILONZO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The appellant was on February 4, 2020 arraigned before the Taveta PM’s court charged with shop breaking and committing a felony contrary to section 306(a) of the *Penal Code*. Particulars were that on January 31, 2020 in Taveta county broke and entered the shop of Ruth Vuto and thereon committed a felony namely; theft thereby stealing assorted shop items valued at 5000/= the property of Ruth Vuto.
2. In the alternative, he was charged with handling stolen goods c/s 322 (2) of the *Penal Code* in that on January 31, 2020, otherwise than in the course of stealing dishonestly undertook the retention of stolen goods valued at Kshs 5000/= knowing or having reason to believe that they were stolen.
3. Upon pleading guilty, he was on February 4, 2020 convicted and sentenced to serve 7years imprisonment. Dissatisfied with the said sentence, he moved to this court *vide* a notice of motion filed on November 11, 2022 seeking revision of the sentence on grounds that he; was remorseful; was a first offender; the sentence imposed was excessive and that; he was the sole breadwinner to his family.
4. When the matter came up for directions, the court ordered for a re-sentencing probation report which recommended that the applicant do serve the remaining period of his sentence in undertaking community service work.
5. During the hearing, the applicant reiterated the content contained in his application while the state was not opposed to the applicant’s release and placement on community service order.



6. I have considered the application herein and the response thereof. 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 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.
7. Courts have time and again held that sentencing is at the trial court's discretion and that an appellate court can only interfere if proved inter alia; that the trial court erred by applying wrong principles of the law or that the sentence was excessive. See the case *Bernard Kimani Gacheru v Republic* (2002) eKLR.
8. In the circumstances of this case, the stolen items were recovered. The probation officer's report is favourable thus recommending anon-custodial sentence. Considering the full recovery of the items stolen, a sentence of 7years imprisonment was excessive. Having been in custody since 2020, he has suffered sufficient punishment. Accordingly, the applicant's sentence is reviewed so as to be released to serve six months' community service work at Taveta Police Station.

ROA 14 days.

Dated, signed and delivered virtually at Mombasa this 19th January 2023.

.....

J.N ONYIEGO

JUDGE

