



REPUBLIC OF KENYA



**Abdi v Republic (Criminal Revision E340 of 2022)
[2023] KEHC 1861 (KLR) (Crim) (27 February 2023) (Revision)**

Neutral citation: [2023] KEHC 1861 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL
CRIMINAL REVISION E340 OF 2022**

DR KAVEDZA, J

FEBRUARY 27, 2023

BETWEEN

MOHAMMED KHALIF ABDI APPLICANT

AND

REPUBLIC RESPONDENT

REVISION

1. The applicant was charged, convicted and sentenced to 1-year imprisonment for the offence of conveying suspected stolen goods contrary to section 323 of the *Penal Code*. The applicant now seeks a revision of his sentence to a non-custodial one.

Analysis of law

2. Upon receipt of the request for revision of sentence, this court directed that a Sentence Review Report be filed on the convict for consideration by the Court.
3. The Probation Officer Mr Andrew Kanyutu filed a report on the convict for consideration by the Court. The report shows that the Applicant is aged 27 years. He is currently serving his sentence in Kamiti Medium Prison and recommends a non -custodial sentence.
4. The powers of the High court in revision are contained in Section 362 through to 366 of the *Criminal Procedure Code* (cap 75). Section 362 specifically provides as follows: -

“The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.”



5. The matter of sentence is governed by section 36 of the Penal Code which contains the general punishment for a misdemeanor being imprisonment for a term not exceeding two years or fine or both. The sentence of 1-year imposed was within the law. As such, it has not been demonstrated that the trial magistrate committed any illegality, impropriety or mistake in sentencing the applicant.
6. I am nonetheless alive to The [Sentencing Policy Guidelines](#) page 21 which provides: -

“Where the option of a non-custodial sentence is available, a custodial sentence should be reserved for a case in which the objectives of sentencing cannot be met through a non-custodial sentence. The court should bear in mind the high rates of recidivism associated with imprisonment and seek to impose a sentence which is geared towards steering the offender from crime. In particular, imprisonment of petty offenders should be avoided as the rehabilitative objective of sentencing is rarely met when offenders serve short sentences in custody. Further, short sentences are disruptive and contribute to re-offending.”
7. I also take notice of the probation report by Mr Andrew Kanyutu which indicates that the applicant is remorseful. In his mitigation, he stated that he has been remanded the entire period of the trial and prayed for leniency. He indicated that he has future plans to restart his shop at City Stadium. He explained that he had the rent for the shop for several months up to April 2023. He also plans to get settled in a stable relationship.
8. I find this application merited and hereby allow it. I note that the applicant has already served three (3) months imprisonment.
9. In the circumstances, I invoke the provisions of Section 3 of the [Community Service Orders Act](#) No 18 of 2018 and set aside the sentence imposed by the trial court and substitute the remainder of the prison term with an order that the applicant Mohamed Khalif Abdi shall serve unpaid community service at Kaloleni Chief Camp under the supervision of Milimani High Court Probation Office.
10. It is so ordered.

RULING READ, DELIVERED AND SIGNED THIS 27TH DAY OF FEBRUARY 2023

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D. KAVEDZA

JUDGE

In the presence of:

