



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mukiri v Republic (Criminal Revision E342 of 2022)  
[2023] KEHC 1548 (KLR) (Crim) (27 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 1548 (KLR)

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

**CRIMINAL  
CRIMINAL REVISION E342 OF 2022**

**DR KAVEDZA, J  
FEBRUARY 27, 2023**

**BETWEEN**

**JEREMIAH MUKIRI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant was charged, convicted and sentenced to 6 months imprisonment for the offence of stealing contrary to section 268 of the *Penal Code*. The applicant now seeks a revision of his sentence to a non-custodial one.

**Analysis of law.**

2. The Probation Officer Ms Deborah Ekulan filed a report on the applicant for consideration by the court. As per the report, the applicant is 21 years and is currently serving his sentence at Kamiti Medium Prison.
3. The provisions of section 362 as read with section 364 of the *Criminal Procedure Code* are clear that revision jurisdiction is by no means an appeal by the aggrieved party to the High Court in criminal cases where such orders are being sought under section 364. On revision the court should steer clear from trespassing into the realm of appellate jurisdiction.



4. The issue herein is whether the circumstances of the matter justify a revision by a superior court from subordinate court. On this issue I draw guidance as elucidated in the case in the case of *Republic –vs- James Kiarie Mutungei* [2017] eKLR, Nyakundi J held thus:

“The rationale of the High Court as a revisionary authority can be initiated by an aggrieved party, or suo moto made by the court itself, call for the record relating to the order passed or proceedings in order to satisfy itself as to the legality, or propriety, correctness of the order in question. The scope of revision therefore is more restrictive in comparison with the appellate jurisdiction which requires the high court to rehear the case and evaluate the evidence in totality by the lower court to come with a decision on the merits...”

5. As to the sentence, the general punishment for theft under section 275 of the *Penal Code* is imprisonment for three (3) years. The sentence of 6 months imposed was within the law and lenient notwithstanding that the applicant was a first-time offender. 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 Ms Deborah Ekulan and her recommendation that the inmate is suitable for a non-custodial sentence.

8. I therefore find this application merited and hereby allow it. I also 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 Jeremiah Mukiri shall serve unpaid community service at Kabete Police Station under the supervision of Milimani High Court probation office.

10. I the applicant has served the prison sentence, the above orders will not apply. It is so ordered.

**RULING READ, DELIVERED AND SIGNED THIS 27<sup>TH</sup> DAY OF FEBRUARY 2023**

**D. KAVEDZA**

**JUDGE**

**In the presence of:**

