



REPUBLIC OF KENYA



**Nyagah v Republic (Criminal Revision E499 of 2022)
[2023] KEHC 1869 (KLR) (Crim) (27 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 1869 (KLR)

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

**CRIMINAL
CRIMINAL REVISION E499 OF 2022**

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

BETWEEN

CHARITY WANJIRU NYAGAH APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged and convicted to 2 years' imprisonment for Stealing contrary to Section 268 (1) as read with Section 275 of the *penal code*. The applicant subsequently seeks for a revision of her sentence to a non-custodial one.
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 Community Service Officer AA Otukho filed her report in court showing that the Applicant is aged 27 years. She is currently serving her 2-year prison term at Langata Prison and recommends a non-custodial sentence.

Analysis of Law

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 issue herein is whether the circumstances of the matter do 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 where 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...”

6. The maximum sentence provided for the offence of stealing contrary to Section 275 of the *Penal Code* is 3 years’ imprisonment. The sentence of 2 years imposed was within the law and by any standards lenient even considering that the applicant was a first offender. It has not been demonstrated that the trial magistrate committed any illegality, impropriety or mistake in sentencing the applicant.

7. 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.”

8. I also take into consideration the mitigation of the applicant that she was remorseful. She also showed willingness to work and pay back the money stolen no matter how long it takes. She also has a 5 year old child who was dependent on her, being the sole bread-winner.

9. I find this application merited and hereby allow it. I note that the applicant has already served 4 months imprisonment.

10. The 2 years’ imprisonment sentence imposed on October 25, 2022 by the trial court is hereby quashed. The applicant is referred to a non-custodial sentence for the remaining imprisonment term, having been declared suitable. She shall serve supervised and unpaid community service at a Chief’s Camp in Ngoliba, where she intends to join her family and seek employment.

11. It is hereby so ordered.

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

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D. KAVEDZA

JUDGE

