



**Wambua v Republic (Criminal Revision E390 of 2022)
[2023] KEHC 1863 (KLR) (Crim) (27 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 1863 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL REVISION E390 OF 2022
DR KAVEDZA, J
FEBRUARY 27, 2023**

BETWEEN

BRIAN WAMBUA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged, convicted and sentenced to 2-years imprisonment for the offence of stealing from a person contrary to section 279(a) 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. Ibrahim Mire filed a report on the convict for consideration by the Court. The report shows that the Applicant is aged 18 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 issue herein is whether the circumstances of the matter does 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...”

6. On the issue of sentence, a person convicted under section 279 (a) of the Penal Code is liable to imprisonment for fourteen (14) years. The sentence of 2 years imposed is within the law and by any standards lenient even considering 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.

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 have also considered the probation report by Mr. Ibrahim Mire which indicates that the applicant is remorseful. In his mitigation, he stated that it is not his character to commit the offence and it is only lack of income that pushed him. The community through the chief stated that stealing and other criminal acts are on the rise in the area however, there is no cause of alarm as to the character of the convict. The convict has future plans of enrolling to TVET for a mechanical course and was ultimately recommended for non-custodial sentence.

9. I find this application merited and hereby allow it. I note that the applicant had served two (2) months imprisonment at the time of examination by the probation officer.

10. 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 Brian Wambua serve supervised and unpaid community service at Kamkunji Secondary School under the supervision of Makadara Probation Officer.

11. It is so ordered.

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

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D. KAVEDZA

JUDGE

