



REPUBLIC OF KENYA



**Njoki v Republic (Criminal Revision E212 of 2022)
[2023] KEHC 1093 (KLR) (23 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 1093 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL REVISION E212 OF 2022
MM KASANGO, J
FEBRUARY 23, 2023**

BETWEEN

LYDIA MUTHONI NJOKI APPLICANT

AND

REPUBLIC RESPONDENT

*(Being a criminal revision application from an order on sentence of
22nd November, 2021 in the Chief Magistrate's Court at Kiambu
(Hon. E. Ominde, CM) in Criminal Case No. E2098 of 2021)*

RULING

1. Lydia Muthoni Njoki (Lydia) seeks by her application dated October 5, 2022 revision of her sentence in case file Kiambu Chief Magistrate's Court criminal case No E2098 of 2021.
2. Lydia was charged with four counts of stealing contrary to section 268(1)(2)(a) as read with section 275 of the *Penal Code*. Lydiah pleaded guilty to all those counts. The trial court after considering Lydiah's mitigation sentenced her as follows:-
 1. On count 1 to fine of Kshs 100,000 in default to serve 6 months imprisonment.
 2. On count 2 to fine of Kshs 100,000 and in default to serve 6 months imprisonment.
 3. On count 3 to fine of Kshs 500,000 and in default to serve 2 years imprisonment.
3. The above sentences were ordered to run consecutively.
4. By her application, Lydiah seeks revising of the above sentence based on the grounds that she pleaded guilty, that she has changed her life, that she has a child who was five months when Lydiah was imprisoned and that because the trial court ordered the sentences to run consecutively.



5. The power to undertake revision of the subordinate court is found in section 362 of the *Criminal Procedure Code*. That section provides:-

“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.”

6. Lydia in filing her application did not specify the lack of correctness of legality or propriety in the trial court’s sentence. The fact she has changed her way or that she has child is not a ground for revising an order.

7. Section 275 of the *Penal Code* which sets out the punishment for conviction of the offence of theft provides:-

“Any person who steals anything capable of being stolen is guilty of the felony termed theft and is liable, unless owing to the circumstances of the theft or the nature of the thing stolen some other punishment is provided, to imprisonment for three years.”

8. Section 14 of the *Criminal Procedure Code* provides when a person is convicted on one or two distinct offences to which several sentences prescribed such sentences can run consecutively provided the aggregate sentence is not excessive of the lawful sentence.

9. The sentence passed against Lydia cumulatively is 3½ years imprisonment. Section 275 of the *Penal Code* cited above provides for maximum 3 years imprisonment. The total imprisonment period passed by the trial court exceeds the period set out in section 275 of the *Penal Code* by 6 months.

10. It is worthy considering a discussion in the case of *David Korir v Republic* (2020) eKLR by Justice Mumbua T. Matheka as follows:-

“10. This application of section 14 of the Penal Code was discussed at length by Khamoni J in *George Mwangi Chege & 2 others v Republic* [2004] eKLR. For clarity I quote him here:

In paragraph 495 of Halsbury’s Laws of England it is stated:-

‘A person sentenced on several charges, whether on separate indictments or on different counts in one indictment, may be sentenced to more terms than one of imprisonment and these terms may be directed either to run concurrently with one another or to be consecutive, so that one commences on the expiration of another. Consecutive sentences of borstal training should never be passed.

Where sentence of imprisonment is passed on a person already serving a sentence for another offence, the court may impose a sentence for the subsequent offence to run concurrently with, or to commence at the expiration of, the existing sentence.

As a general rule, consecutive sentences should not be such as to result in an aggregate term wholly out of proportion to the gravity of the offences, looked at as a whole.”

11. The trial court’s sentence will be reviewed only on count 3 in view of its lack of correctness as provided under section 275 of the *Penal Code*.



Conclusion

12. In the end and following the above discussion, I hereby review the sentence on count 3 only of Lydiah Muthoni Njoki in the case Kiambu Chief Magistrate's Court criminal case No E2098 of 2021 as follows:-

On count 3:

The accused shall to pay fine of Kshs 500,000 and in default shall serve 1½ years imprisonment.

13. The sentences on count 1, 2, 4 and 3 as revised shall run consecutively.

14. This file is hereby closed.

RULING DATED and DELIVERED at KIAMBU this 23rd day of FEBRUARY, 2023.

MARY KASANGO

JUDGE

Coram:

Court Assistant : Mourice/Julia

For DPP :-

For Lydiah Muthoni Njoki:- present in person represented by Mr. Mitugo

DPP for Respondent:- Mr. Gacharia: Absent

RULING delivered virtually.

MARY KASANGO

JUDGE

