



**Mwiti v Republic (Criminal Case E097 of 2022)  
[2023] KEHC 1355 (KLR) (Crim) (21 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 1355 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
CRIMINAL CASE E097 OF 2022  
LN MUTENDE, J  
FEBRUARY 21, 2023**

**BETWEEN**

**JOSEPH MWITI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Joseph Mwiti, the applicant, seeks review of the sentence imposed by the subordinate court for the offence of stealing.
2. The applicant was arraigned in court following allegations of having committed the offence of theft of a motorcycle contrary to Section 268 (2) (a) as read with Section 278A of the *Penal Code*.
3. Particulars of the offence were that on November 3, 2021 at Pangani Shopping Centre in Starehe Sub-County within Nairobi County stole a motorcycle registration No KMR Q 955N make Boxer red in colour valued at Kshs 126,000/- the property of Frankline Murangai Mugambi
4. At the outset, the applicant denied the charges. However, a month later he changed plea by admitting the charge. In the result he was convicted and sentenced to serve three (3) years imprisonment.
5. The basis of the application is that the applicant's continued incarceration has made him suffer irreparably because of unfriendly and deplorable conditions in prison.
6. Urging the court to consider granting him an option of a fine or non-custodial sentence, he stated that while in prison, he has learnt the consequences of crime and promised not to engage in criminal activities.



7. This court has been called upon to interfere with a sentence meted out by the trial court. In such circumstances this court must consider what transpired at trial and also consider case law. In the case of *Bernard Kimani Gacheru vs Republic* Criminal Appeal No 188 of 2000, the Court of Appeal stated that:

“It is now settled law, following several authorities by this court and by the High Court, that sentence is a matter that rests on the discretion of the trial court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with sentence unless, that sentence is manifestly excessive on the circumstances of the case, or that the trial court overlooked some material factor, or took into account, some wrong material, or acted on a wrong principle. Even if, the appellate court feels that the sentence is heavy and that the appellate court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, anyone of the matters already stated is shown to exist. (Emphasize added).”

8. Section 278A of the Penal Code provides for imprisonment of up to seven (7) years imprisonment in a case where the item stolen is motor-vehicle within the meaning of the *Traffic Act*; which includes a motor-cycle.

9. In making a decision on what sentence to impose, a court should not only think of an offender but the victim as well as a just society. The objective of sentence includes interalia deterring an offender or others not to commit other crimes; removal of the offender from the society so that it can be safe as he is rehabilitated in prison.

10. This is a case where the offender stole a motor-cycle valued at Ksh 126,000/- that was not recovered. In meting out the sentence, the trial court took into consideration the fact of the applicant having admitted the charge at the outset hence having saved judicial time; and, the applicant having taken advantage of the complainant’s generosity.

11. A pre-bail report that was carried out prior to the applicant being convicted established that the applicant is facing another case of preparation to commit felony before Makadara Court.

12. The upshot of the above is that the court meted out a sentence that was within the law. And there was no misdirection whatsoever, in the premises, the application lacks merit. Accordingly, it is dismissed.

13. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS AT NAIROBI, THIS 21<sup>ST</sup> DAY OF FEBRUARY, 2023.**

**L N MUTENDE**

**JUDGE**

**IN THE PRESENCE OF:**

**Applicant**

**Mr Kiragu for DPP**

**Court Assistant - Evance**

