



**Saningo v Republic (Miscellaneous Criminal Application
E100 of 2022) [2023] KEHC 1079 (KLR) (21 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 1079 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
MISCELLANEOUS CRIMINAL APPLICATION E100 OF 2022
GMA DULU, J
FEBRUARY 21, 2023**

BETWEEN

LAZARO SANINGO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. This is a request for review of sentence imposed in a criminal matter in Makindu SPM Criminal Case no 896 of 2022, wherein the applicant was sentenced to pay fine kshs 200,000/= in default two (2) years imprisonment.
2. The request was brought to this court by Kirimi advocate through a Notice of Motion dated December 2, 2022, filed under article 50(q), 165(5) and (6) of the *Constitution* of Kenya and section 364 of the *Criminal Procedure Code* (Cap 75).
3. The application has grounds on the face of the Notice of Motion, that the matter arose out of grazing of livestock in the Kyulu National Park during this drought season by a pastoralist, who pleaded guilty to the charge and did not waste the court's precious time, and that he is a first offender, but was sentenced to pay a fine of kshs 200,000/= which was a stiff penalty.
4. The state, through the prosecuting counsel who appeared in court, did not object to the request for review of the sentence.
5. This court has discretion to review any order made by the magistrates' court in criminal proceedings under the provisions of section 362 through to 364 of the *Criminal Procedure Code* (cap 75). In doing so, the court is not bound to hear any of the interested parties involved, but in this case heard the applicant's counsel and the prosecuting counsel.



6. Having considered all the facts and evidence placed before me and the circumstances of the whole matter, where the convicted person pleaded guilty to the offence, I am of the view that the sentence imposed was not justified in the circumstances of the case, as it was harsh and excessive.
7. Since the convict has been in prison custody since the end of November 2022, more than 2 ½ months now, I find that the prison sentence already served is adequate punishment.
8. I thus exercise this court's review powers under the Criminal Procedure Code, and set aside the sentence imposed, and order that instead, the convict herein will serve the prison sentence already served to date. The convict will thus be released from custody forthwith unless otherwise lawfully held.

DELIVERED, SIGNED & DATED THIS 21ST DAY OF FEBRUARY 2023, IN OPEN COURT AT MAKUENI.

.....

GEORGE DULU

JUDGE

