



**Mose v Republic (Criminal Revision E016 of 2023)
[2023] KEHC 20414 (KLR) (29 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 20414 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
CRIMINAL REVISION E016 OF 2023
WA OKWANY, J
JUNE 29, 2023**

BETWEEN

JAMES ONGERA MOSE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant herein, James Ongera Mose alias Boy was charged before the Lower Court with the offence of cutting down trees contrary to Section (c) of the Penal Code.
2. The particulars of the offence were that on February 2, 2023 at Kenyambi village, Kenyambi Sub-location, Bogichora Location within Nyamira County, willfully and unlawfully cut down 3 (three avocado and 1 (one) Grevellia trees valued at Kshs 14,896/= the property of Erastus Orina.
3. The Applicant pleaded guilty to the said charge and was consequently convicted on his own guilty plea and thereafter sentenced to a fine of Kshs 50,000/= in default, 5 (five) years imprisonment.
4. The Applicant did not appeal against the conviction and sentence but filed the instant application for revision of sentence under Sections 362 and 364 of the Criminal Procedure Code which stipulate as follows: -

362. "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.

364.



- (1) In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may —
 - (a) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 354, 357 and 358, and may enhance the sentence;
 - (b) in the case of any other order other than an order of acquittal, alter or reverse the order."

5. The Respondent, through Mr Chirchir, did not oppose the application for revision and observed that the sentence is excessive considering the value of the trees that were cut down.
6. I have considered the application, the trial court's record and the fact that the State did not oppose the application for revision.
7. In *Wagude v R* [1983] KLR 569, it was held as follows: -

“The court may interfere with the sentence only if it is shown that it was manifestly excessive. In this instance, two years imprisonment for stealing by a person employed in the public service was not manifestly excessive.”
8. I have considered the Probation Officer's Pre-sentencing Report tendered before the trial court which indicates that the Applicant was involved in land/boundary disputes with several neighbours in which he had been accused of destruction of property.
9. I find that in the circumstances of this case, the sentence of 5 (five) years imprisonment or a fine of Kshs 50,000/= was inordinately high and not commensurate with the gravity of the offence which showed that the value of the trees that were cut down was Kshs 14,896/=. The sentence will, on this account, be set aside.
10. Consequently, I set aside the five (5) years imprisonment sentence and substitute it with the period that the Applicant has already served in prison since his conviction and sentence on March 30, 2023. This means that the Applicant shall henceforth be set at liberty unless he is otherwise lawfully held.
11. It is so ordered.

RULING DATED, SIGNED AND DELIVERED AT NYAMIRA VIA MICROSOFT TEAMS THIS 29TH DAY OF JUNE 2023.

W. A. OKWANY

JUDGE

