



**Muriithi v Republic (Miscellaneous Criminal Application  
E017 of 2022) [2023] KEHC 21714 (KLR) (28 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 21714 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA  
MISCELLANEOUS CRIMINAL APPLICATION E017 OF 2022**

**JN ONYIEGO, J**

**JULY 28, 2023**

**BETWEEN**

**PETER WANJOHI MURIITHI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant herein was arraigned before Garissa CM’s Court charged with the offence of theft of motor-cycle contrary to section 278 (a) of the *Penal Code*. Particulars were that on the night of 15<sup>th</sup> and January 16, 2022 at unknown time at Madogo area, madogo location, Tana North sub-county within Tana River county stole a motor-cycle registration number KMFG 624H make Honda 125 CC red in colour valued at Kshs 103,900/= the property of Mary Kalunda Mwendwa.
2. Upon conclusion of the case, the appellant was convicted and sentenced to 6 years’ imprisonment on May 24, 2022. Subsequently, he filed what is being referred to as “mitigation appeal” seeking review of sentence on grounds that he is the breadwinner of his family; he is from a poor family and that his wife and mother depend on him. He urged the court to give him affordable or non-custodial sentence.
3. In response, the respondent filed submissions on May 24, 2023 arguing that the sentence meted out was lawful and appropriate.
4. I have considered the application herein seeking review of the sentence. It is trite that sentencing is at the discretion of the sentencing court and that an appellate court will only interfere if the trial court applied wrong legal principles; the sentence is excessive or that the trial court took into consideration irrelevant factors. See: *Robert Mutungi Muumbi v Republic* (2025) eKLR.
5. In the instant case, the trial court took Judicial notice that offences of motor-cycle stealing were rampant in the area and a deterrent sentence was necessary.



6. The offence the applicant was charged with carries a maximum penalty of seven years. Having pleaded guilty, I would find six years a bit excessive.
7. Accordingly, I am inclined to substitute the sentence of six years with four years to start running from the date he was sentenced.

**DATED, SIGNED AND DELIVERED THIS 28<sup>TH</sup> DAY OF JULY, 2023**

.....

**J. N. ONYIEGO**

**JUDGE**

