



REPUBLIC OF KENYA



**KENYA LAW**  
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**Sylvester v Republic (Criminal Revision E312 of 2022)  
[2023] KEHC 24145 (KLR) (Crim) (26 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 24145 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL**

**CRIMINAL REVISION E312 OF 2022**

**LN MUTENDE, J**

**OCTOBER 26, 2023**

**BETWEEN**

**MUTESA NZIOKA SYLVESTER ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Mutesa Nzioka Sylvester, the Applicant, was arraigned in court following allegations of having committed the offence of Stealing Contrary to Section 268(1) of the *Penal Code*. Particulars of the offence being that on diverse dates between 1<sup>st</sup> April, 2022 and 1<sup>st</sup> July, 2022, at Shikoini Market in Riruta within Nairobi County, he stole four (4) seater recliner furniture of Kshs 28,000/, 6 seater recliner furniture of Kshs 65,000/-, 7 seater Nakumat furniture of Ksh 65,000/-, two (2) 7 masikio furniture of Ksh. 120,000/- four (4) 5 seater masikio of Ksh. 16,000/-, three (3) 7 seater boston furniture of Ksh. 165,000/-, 5 seater boston furniture of Ksh. 40,000, L-shape sofa set of Ksh. 35,000/-, two (2) single diamond of Ksh. 30,000/-, coffee table of Ksh. 5000/- and four stools of Ksh.10,000/- all valued at Ksh 975,000/- the property of Agather Njeri Mwangi.
2. Having been taken through full trial, the applicant was found guilty, convicted and sentenced to pay a fine of Ksh. 975,000/- and, in default, to serve two (2) years imprisonment.
3. Through an application dated 9<sup>th</sup> December, 2022, the applicant seeks review of the sentence of the subordinate court.
4. The application is premised on grounds that the applicant was not granted an option of a non-custodial sentence. That the applicant who suffers from abject poverty and deprivation cannot raise the fine. The applicant swore an affidavit in support of the application where he basically expressed remorse.



5. This court has jurisdiction to review the verdict of the subordinate court where it has exceeded its limit of jurisdiction or where there is incorrectness, an illegality and impropriety. The revisional jurisdiction is provided by Section 362 of the Criminal Procedure Code(CPC) that enacts as follows:

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. Section 275 of the Penal Code provides that:

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.

7. The trial court having opted to fine the applicant ought to have been guided by Section 28 of the Penal Code that provides thus:

(2) In the absence of express provisions in any written law relating thereto, the term of imprisonment or detention under the *Detention Camps Act* (Cap. 91) ordered by a court in respect of the non-payment of any sum adjudged to be paid for costs under section 32 or compensation under section 31 or in respect of the non-payment of a fine or of any sum adjudged to be paid under the provisions of any written law shall be such term as in the opinion of the court will satisfy the justice of the case, but shall not exceed in any such case the maximum fixed by the following scale—

Amount.....Maximum period

Exceeding Sh. 50,000 ... .. 12 months.

8. Imposing a default sentence of two (2) years imprisonment was improper. Therefore, I set the default sentence aside. The applicant/offender having served eleven (11) months, and following the recommendation of the Community Service Officer, I am satisfied that he is suitable to perform community service which will be undertaken at Barazani Chief's Camp, Mutiswa Sub-location, Makueni County for a period of one (1) month, to be supervised by Makueni Probation Office.

9. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS AT NAIROBI, THIS 26<sup>TH</sup> DAY OF OCTOBER, 2023.**

**L. N. MUTENDE**

**JUDGE**

In the presence of:

Applicant

Ms. Akunja for ODPP

Ms. Deborah Ekulan – Community Service Officer

Court Assistant - Mutai

