



REPUBLIC OF KENYA



KENYA LAW
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**Nyariaro v Republic (Criminal Revision E170 of 2023)
[2023] KEHC 26794 (KLR) (22 December 2023) (Ruling)**

Neutral citation: [2023] KEHC 26794 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
CRIMINAL REVISION E170 OF 2023
HI ONG'UDI, J
DECEMBER 22, 2023**

BETWEEN

VINCENT MACHUKI NYARIARO APPLICANT

AND

REPUBLIC RESPONDENT

*(Revision against the sentence delivered by Hon. P.K. Mutai, S.R.M.
on 21st February 2023 in Kisii Criminal Case No. E1265 of 2020)*

RULING

1. Vincent Machuki Nyariaro was charged with stealing contrary to Section 268 as read with section 275 of the *Penal Code*. The particulars being that on diverse dates between 23rd June 2022- 17th October 2022 at Kegogi Location within Kisii County, he stole several motorcycle spare parts as per the list produced in Court. They were valued at Kshs. 169,420/= the property of Wycliffe Omondi Osumba. He was first arraigned in Court on December 6, 2022 when he denied the charge. On February 21, 2023 he expressed his desire to change plea. The charge and facts were read to him and admitted both of them. He was thereafter convicted on admission. He mitigated and was sentenced to two (2) years imprisonment.
2. He later filed this undated Notice of Motion on June 16, 2023 seeking for a review of the sentence. He specifically wishes to be placed on probation. In his supporting affidavit he states that he was not given an option of a fine nor considered for probation which he prays for. He adds that he was a first offender.
3. The respondent through learned counsel Mr. Ayodo vehemently opposed the application. He submitted that the Trial Court considered everything and the fact that the applicant had pleaded guilty and saved the Court's time. He added that the applicant had already served one year of his sentence.



4. Before me is the record of the lower court proceedings. The motorcycle was evaluated and an inspection report filed (Exb.1). The general finding was that the motorcycle was uneconomical to repair, and so recommended for boarding. The value of the vandalized parts was KShs. 169,420/=.
5. The court had called for a Probation Officer's Report but the same has not been availed to the court to date. Besides indicating that he was a first offender he has not fully stated why the sentence of two years should be reduced or substituted to probation.
6. There is no evidence of any of the spare parts having been recovered hence the complainant lost all the listed spare parts of his motorcycle. The applicant was sentenced to 2 years imprisonment, on February 21, 2023. He will only serve $\frac{2}{3}$ of the sentence which comes to 16 months, twelve of which he has already served. This leaves him with 4 months to serve.
7. He was in remand custody from December 6, 2022 to February 21, 2023. In line with section 333(2) of the *Criminal Procedure Code*, this period will be deducted from the 4 months which leaves him with a period of less than two (2) months.
8. I do not therefore find any merit in the application for re-sentencing, which I hereby dismiss. The applicant will serve the remaining part of the sentence less the period spent in remand custody from December 6, 2022 -February 21, 2023.
9. Orders accordingly.

DELIVERED VIRTUALLY, DATED AND SIGNED AT KISII THIS 22ND DAY OF DECEMBER 2023.

H.I. ONG'UDI

JUDGE

In the presence of:

Applicant

Mr. Ochengo for the State

Otieno: Court Assistant

