



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kitur v Republic (Criminal Revision E216 of 2022)  
[2023] KEHC 26749 (KLR) (20 December 2023) (Ruling)**

Neutral citation: [2023] KEHC 26749 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL REVISION E216 OF 2022  
RN NYAKUNDI, J  
DECEMBER 20, 2023**

**BETWEEN**

**DENNIS KIPCHUMBA KITUR ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being a Review on Sentence from the Chief Magistrate's Court  
Decision E1984 of 2022 Delivered on 11.11.2022 by Hon. D.Mikoyan)*

**RULING**

**Coram:** Before Justice R. Nyakundi

Mr.Mugun for the State

1. The applicant approached this court vide a notice of motion application seeking orders that the applicant be accorded probatory/custodial sentence and /or suspended sentence in the circumstances. The application is premised on the grounds set out therein and the contents of the affidavit in support of the same.
2. The applicant was charged with the offence of stealing contrary to section 268 as read with section 275 of the [Penal Code](#) in Eldoret Chief Magistrates' Criminal Case E1984 of 2022. The particulars of the offence were that on diverse dates between 16<sup>th</sup> October 2021 to 16<sup>th</sup> October 2021 in Kesses sub county within Uasin Gishu county stole cash Kshs. 400,000/-, the property of Irene Mutai. The trial court, upon considering the testimonies and evidence presented in court, the trial court convicted him and sentenced him to two years' imprisonment on 11<sup>th</sup> November 2022.
3. The applicant then approached this court seeking orders for review of his sentence on the grounds that the sentence of 2 years without an option of a fine was prejudicial to the applicant considering the offence of stealing has the option of a fine upon conviction. Further, that the applicant was not



accorded an opportunity to mitigate and that the court failed to comply with section 213 of the Criminal Procedure Code. The applicant contended that the trial court failed to provide the applicant with the pre probation report and actually giving him a copy to read and make comments before the judgement delivered.

### **Analysis & Determination**

4. The High Court's power of revision is set out in article 165 which provides:-

- (6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but over a superior court.
- (7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.

5. Section 362 of the [Criminal Procedure Code](#) provides;

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. The power to revise orders made by the subordinate court is under section 264 of [Criminal Procedure Code](#) which provides:-

- “(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.

7. Upon calling for the record of the trial court this court was supplied with the same and upon reading the same, it is clear that the trial magistrate sentenced the applicant to two years' imprisonment. Section 275 of the [Penal Code](#) provides as follows;

275. General punishment for theft

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.

8. From the record of the court, there was no mitigation before sentencing the applicant. I have considered the sentence review report, and the record of the court that was produced and it is evident that there is an impropriety in the proceedings and the sentencing. The trial court did not also state that it bore in mind those circumstances as it sentenced the applicant. In my view, the sentence he has so far served suffices as sentence for the offence. I accordingly grant the following orders;



1. The applicant's sentence is hereby quashed and substituted with one of non-custodial sentence for the remaining period of one year.
2. The applicant to be set free unless otherwise lawfully held.

**DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 20<sup>TH</sup> DAY OF DECEMBER 2023**

**In the Presence of**

Mr. Mugun for the State

.....

**R. NYAKUNDI**

**JUDGE**

