



**Kamau v Republic (Miscellaneous Criminal Application  
E033 of 2020) [2022] KEHC 11949 (KLR) (31 March 2022) (Ruling)**

Neutral citation: [2022] KEHC 11949 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIVASHA  
MISCELLANEOUS CRIMINAL APPLICATION E033 OF 2020  
GWN MACHARIA, J  
MARCH 31, 2022**

**BETWEEN**

**JOHANA NGANGA KAMAU ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant by a Chamber Summons application filed on March 4, 2021 prays that the sentence be reviewed by substituting the same with a non-custodial sentence preferably Community Service Orders. The same is supported by a self-sworn affidavit filed on even date.
2. The Applicant was charged at Engineer Law Courts with two counts of Stealing Stock contrary to Section 278 of the *Penal Code*. Alternatively, he was charged with being in possession of stolen property contrary to Section 322 (2) of the *Penal Code* in that in the course of stealing he dishonestly retained two sheep having reasons to believe them to stolen property.
3. The Applicant was convicted in both counts and sentenced to serve 10 years for both. The learned trial magistrate pronounced herself as follows:

“Therefore accused to serve 10 years in both count I and count II. Right of appeal 14 days.”
4. From the above pronouncement, the learned trial magistrate failed to state whether the sentences were either to run concurrently or consecutively which was a grave error in law.
5. Section 278 of the *Penal Code* provides for a maximum sentence of 14 years where an accused is found guilty of stealing stock. In this case, the Applicant who was the accused did not have a record of previous convictions presented in court. However, the prosecution informed the court that he had a similar case pending vide Criminal Case No. 777 of 2016. All the same, this was the first conviction. He also pleaded guilty, thus saving the court’s time. Notably, the court requested that a Probation Officer’s



Report (POR) be filed so as to inform the court of the Applicant's background and antecedents which would in turn help arrive at an objective sentence. Unfortunately, for a period of close to three months, the same was not presented.

6. I note that the Applicant offered mitigation amongst which he stated that he was remorseful. Against the backdrop that he pleaded guilty and this was the first conviction, I take the view that a sentence of 10 years for both counts was excessive.
7. In the result, I find the application meritorious. I set aside the 10-year jail term and substitute it and order that the Applicant shall serve 4 (four) years imprisonment in each of the counts. The sentences shall run concurrently.
8. It is so ordered.

**DATED AND DELIVERED THIS 31<sup>ST</sup> DAY OF MARCH, 2022.**

**G. W. NGENYE-MACHARIA**

**JUDGE**

**In the presence of: -**

Applicant in person.

Ms. Maingi for the Respondent.

