



**Bosire v Republic (Miscellaneous Criminal Application E399 of 2021)
[2022] KEHC 10563 (KLR) (Crim) (21 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 10563 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
MISCELLANEOUS CRIMINAL APPLICATION E399 OF 2021**

LN MUTENDE, J

JUNE 21, 2022

BETWEEN

KEVIN RASUGU BOSIRE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Kevin Rasugu Bosire, who was in employment of the Bank of Africa was alleged to have stolen Kshs. 139,000/- (Kenya Shillings One Hundred and Thirty-Nine Thousand), a sum that came into his possession by virtue of employment.
2. Upon arraignment he denied the charge, was heard, found guilty, convicted for the offence of stealing and sentenced to serve two (2) years imprisonment.
3. By an application dated 3rd November, 2021, he seeks an order granting him an affordable fine.
4. The application is based on grounds that the trial court sentenced him to serve two (2) years imprisonment without an option of fine. That during the trial process, while out on bond for almost a period of five (5) years he worked as a loan officer with a progressive credit society; and, that he has a family of two; a wife and a child aged one and a half (1½) years who solely depend on him and are now going through hardship on account of his incarceration.
5. During hearing he implored the court to let him pay a fine so as to go back to his family. He also pointed out that he has been baptized.
6. The application is opposed. The State through learned Counsel, Ms. Chege urged that the applicant failed to demonstrate that there was an error apparent on the record; whether proceedings were illegal, improper or incorrect and that the sentence meted out was legal and within the confines of the law.



7. I have considered the application, supporting affidavit and rival submissions of both parties herein. Supervisory jurisdiction of the High Court over the subordinate court is provided by the basic principles and written laws.
8. Article 165(6)(7) of *the Constitution* provides that:
 - (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 not 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.
9. Section 362 of the *Criminal Procedure Code* provides that:

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 the proceedings.
10. I have examined the record of the lower court with a view of satisfying myself if there was an irregularity that resulted into substantial injustice. The applicant herein is not affronted by the conviction. His complaint is against the sentence. Section 281 of the *Penal Code* provides thus:

If the offender is a clerk or servant, and the thing stolen is the property of his employer, or came into the possession of the offender on account of his employer, he is liable to imprisonment for seven years.
11. There are various theories of punishment. The purpose of punishment may be to deter other individuals from acting like the offender; preventing the offender from repeating the same act; rehabilitating the offender by making him understand morality and/or to learn how to do some individual work for the duration that he is incarcerated. Of importance, if the individual is seized of some knowledge like the applicant imparting it unto other offenders would be considered.
12. The applicant herein was convicted in absentia having absconded and warrant of arrest issued. After his arrest he was committed to jail.
13. To interfere with the sentence meted out, it must be demonstrated that the court acted on wrong principles or overlooked material factors or took into account irrelevant considerations (see *Ogolla s/o Owuor v Republic* (1954) EACA 270).
14. It has not been alleged that the trial court fell into error in meting out the sentence. It has also not been suggested that the sentence was harsh or excessive.
15. Therefore, the application lacks merit. Accordingly, it is dismissed.
16. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 21ST DAY OF JUNE, 2022.

L. N. MUTENDE

JUDGE

IN THE PRESENCE OF:



Applicant

Ms. Ntabo - ODPP

Court Assistant – Mutai

