



REPUBLIC OF KENYA



KENYA LAW
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**Momanyi v Republic (Criminal Revision E107 of 2022)
[2022] KEHC 13265 (KLR) (Crim) (23 September 2022) (Ruling)**

Neutral citation: [2022] KEHC 13265 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL REVISION E107 OF 2022
CW GITHUA, J
SEPTEMBER 23, 2022**

BETWEEN

JULIUS NYANCHONGA MOMANYI APPLICANT

AND

REPUBLIC RESPONDENT

*(Being an application for review of sentence meted in Makadara
Criminal Case No E798 of 2022 on February 23, 2022.)*

RULING

1. In his undated notice of motion filed on June 23, 2022, the applicant seeks review of the sentence imposed on him by the lower court in Makadara Criminal Case No E798 of 2022.
2. A perusal of the trial court's record shows that the applicant was charged in two counts with the offence of stealing from the person contrary to section 279 (a) of the [Penal Code](#).
The particulars in count 1 were that on February 20, 2022 at Mradi in Embakasi sub county within Nairobi County, he stole a mobile phone make Itel G10 valued at KShs 6,500 the property of Naomi Cherotich from the person of the said Naomi Cherotich.
In count 2, it was alleged that on the same date and place, the applicant stole a mobile phone make Samsung valued at KShs 15,000 the property of Nyangaris Mugoti from the person of the said Nyangaris Mogoti.
3. Upon being arraigned before the trial court, the applicant pleaded guilty to the two charges. He was convicted on his own plea of guilty in both counts. He was sentenced to serve two years imprisonment in each count and the sentences were ordered to run concurrently.



4. In the grounds premising the motion and in his supporting affidavit, the applicant faulted the trial court for meting out a custodial sentence without giving him the option of a fine. He pleaded with the court to review his sentence and substitute it with a non custodial sentence on grounds that he was a first offender; that he was 36 years old and was remorseful for the offences he committed; that he was the sole breadwinner for his family and that he deserved to be given a second chance in life.
5. I have considered the application alongside the record of the trial court. The application invokes the revisional jurisdiction of this court donated by section 362 as read with section 364 of the *Criminal Procedure Code* which empowers this court to call for the record of the lower court and satisfy itself as to the correctness, legality or propriety of any finding, sentence or order recorded by the trial court or the regularity of any proceedings of that court.
6. Given the nature of the complaint made by the applicant in his application, it is important to state at the outset that it is trite that sentencing is a matter that is at the discretion of the trial court. It is settled law that a court exercising supervisory jurisdiction over the trial court can only interfere with a sentence if it was satisfied that the sentence was illegal or that in passing sentence, the court failed to take into consideration relevant factors or took into account irrelevant factors. The court can also interfere with the sentence if it was convinced that it was harsh or manifestly excessive given the circumstances of the case. See *Macharia v Republic*, [2003] KLR 115.
7. In this case, the trial court's proceedings show that when passing sentence, the learned trial magistrate considered the applicant's plea in mitigation including the fact that he was a first offender. The court also considered the circumstances in which the two offences were committed. In my view, the sentence was lawful as it was within the punishment prescribed by the law for the offences for which the applicant was convicted and the learned trial magistrate had discretion in deciding whether to impose a custodial or a non custodial sentence. However, given that the applicant pleaded guilty to the charges thus saving the court's judicial time and considering the value of the stolen items and the fact that they were recovered and restored to the complainants, it is my finding that a concurrent sentence of two years imprisonment was harsh and excessive in the circumstances of this case especially considering that the applicant was a first offender.
8. The trial court's record reveals that the applicant was sentenced on February 23, 2022. This means that he has served sentence for about seven months now. I am satisfied that this constitutes sufficient punishment for the offences he committed.
9. Consequently, I am satisfied that the instant application is merited and it is hereby allowed. The sentence of the trial court is hereby revised and set aside. It is substituted with an order reducing the sentence to the period already served. The applicant is to be released forthwith unless otherwise lawfully held.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 23RD DAY OF SEPTEMBER 2022.

CW GITHUA

JUDGE

In the presence of:

The applicant.

Mr Kiragu for the respondent.

Ms Karwitha: Court Assistant.

