



**Mathenge v Republic (Criminal Revision E154 of 2022)
[2022] KEHC 14800 (KLR) (21 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 14800 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CRIMINAL REVISION E154 OF 2022
GL NZIOKA, J
OCTOBER 21, 2022**

BETWEEN

ELIJAH NJUGUNA MATHENGE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged *vide* Chief Magistrate's Criminal case No. E109 of 22 at the Chief Magistrate's Court at Naivasha with the offence of malicious damage to property contrary to section 339(1) of the *Penal Code*.
2. The particulars of the charge states that, on the 18th day of January 2022, at Milima estate Kayole in Naivasha Sub-County within Nakuru County he wilfully and unlawfully damaged the street lights valued at Kshs 150,000 the property of Nakuru County Government.
3. He pleaded guilty to the charge, was convicted on his own plea of guilty and sentenced to pay a fine of Kshs 300,000 in default to serve 20 months imprisonment.
4. He now seeks for the intervention of the court, seeking that, the period left of the custodial sentence be converted into a non-custodial sentence so that, he serves the same under the community service order. The notice of motion application filed herein on September 27, 2022 is supported by a memorandum of appeal in which he states verbatim as follows:-
 - a. That, I am a first offender.
 - b. That, I pray that this honourable court allow me to spend the remaining period of my sentence under Community Service Order (C.S.O) or sent me at liberty.
 - c. That, I am remorseful of my offence and I have learnt to be a law-abiding citizen.



- d. That, I am from a poor family background.
 - e. That, I did not give proper mitigation during my sentencing and hence would like to present during the hearing and determination of this application.
 - f. That, I humbly beg this honourable court for leniency and reduce my twenty (20) months sentence.
 - g. That, I am NOT appealing against sentence and conviction but applying for a review of sentence.
5. The application has not been opposed by the Respondent, though, it is not quite evident as to whether it was served or not.
 6. Be it as it were, I note that the applicant is certainly not appealing against the conviction and/or sentence neither, is he really seeking for the court to exercise its revision any powers under section 362 as read with section 364 of the [Criminal Procedure Code](#).
 7. However, having considered the application I find that, the offence with which the applicant is charged with provides for a sentence of imprisonment for five years upon conviction. The applicant was fined a sum of Kshs 300,000 in default serve a custodial sentence of 20 months.
 8. The custodial sentence is within a period of five years, however it is a default sentence. The default period are provided under section 284(2) of the [Penal Code](#). The subject section states that a default period shall not exceed the maximum fixed under that section. The schedule there under provides that if the fine exceeds Kshs 50,000/= (as herein) the default period shall not exceed 12 months.
 9. It therefore follows that, the default period herein of 20 months is unlawful. It should have been at most 12 months. I therefore set aside the default period of 20 months and substitute it with a default period of 12 months. I note that the applicant was sentenced on January 24, 2022. If he has served the custodial sentence, subject to remission (if any) and completed, he should be released forthwith, unless otherwise lawfully held.

It is so ordered.

DATED, DELIVERED, SIGNED AT NAIVASHA ON THIS 21ST DAY OF OCTOBER 2022.

GRACE L. NZIOKA

JUDGE

In the presence of:-

Applicant in person

Ms Maingi for the Respondent

Ms Ogutu- Court Assistant

