



**Ng'ang'a v Republic (Miscellaneous Criminal Application E122 of 2021)  
[2022] KEHC 16993 (KLR) (20 December 2022) (Ruling)**

Neutral citation: [2022] KEHC 16993 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIVASHA  
MISCELLANEOUS CRIMINAL APPLICATION E122 OF 2021  
GWN MACHARIA, J  
DECEMBER 20, 2022**

**BETWEEN**

**PETER GITAU NG'ANG'A ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant herein has approached this court seeking a review of sentence. He was charged in the Chief Magistrate's Court at Naivasha in Criminal Case No 672 of 2021 with the offence of stealing from a locked motor vehicle contrary to section 279(g) of the *Penal Code* and an alternative count of handling stolen property contrary to section 322(1)(2) of the *Penal Code*. He was convicted of the main count on his own plea of guilty and sentenced to serve three and a half years imprisonment.
2. I hasten to add that, although the application is premised as a miscellaneous application, the applicant indeed seeks a revision of his sentence, praying that the sentence be reduced as he was remorseful. His application is by way of a notice of motion filed on June 3, 2021. It is supported by an affidavit sworn by himself on even date. Annexed to the affidavit is a list of mitigation grounds. He additionally states that he is a law-abiding citizen, a father of one child, he comes from a poor background and suffers from a chronic disease.
3. Ms Serling for the respondent left it to the court to make a decision.
4. The court also called for a probation officer's pre-sentence report but as at the time of hearing this application, the same had not been availed. Hence, this ruling is based principally on the record of the trial court.
5. This court has accordingly called for the original trial court file pursuant to section 362 of the *Criminal Procedure Code* so that it can examine the record and satisfy 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 the subordinate court.

6. Section 279(g) of the *Penal Code* provides that:

“279. Stealing from the person; stealing goods in transit, etc.

If the theft is committed under any of the circumstances following, that is to say –

(g) If the offender, in order to commit the offence, opens any locked room, box, vehicle or other receptacle, by means of a key or other instrument, the offender is liable to imprisonment for fourteen years”

7. According to the particulars of the charge, the goods listed to have been stolen from the locked motor vehicle were, a Hewett Packard(HP) lap top , A Samsung Note 9 mobile telephone and a back pack all valued at Ksh 109,500/, the property of Fridah Nkirote.

8. From the facts of the case, the applicant was arrested on the spot and all the stolen items were recovered. Thus, although the offence is a felony, the applicant having pleaded guilty and all the stolen goods having been recovered, in the spirit of reforming the offender, my view is that a much more lenient sentence was deserving. Furthermore, regard must be had that, a sentence, apart from being deterrent, is intended to serve the rehabilitative purpose. Too long sentences where it is not warranted may, in the long run, harden an offender as opposed to reforming him or her. The applicant has pleaded remorse and I have no doubt that he is remorseful. He should be accorded an opportunity to reform. Furthermore, he was a first offender and so there is no indicator of reoffending.

9. Under section 364(1)(a) of the *CPC*, if the court finds an application for revision of sentence warranted, may exercise powers conferred upon it under section 354 of the Code. Under section 354(3)(a)&(b), the court may alter the nature of the sentence or increase or reduce the same.

10. For the foregoing reasons, I find the application merited. I set aside the three and a half year-jail term and substitute it with an order that the applicant shall serve one year imprisonment commencing from the date of arrest, which is April 16, 2021. It obviously implies that he has served his entire sentence. I order that he be forthwith set free unless otherwise lawfully held.

**Dated and Delivered at Naivasha This 20<sup>th</sup> December, 2022.**

**G.W. NGENYE-MACHARIA**

**JUDGE**

**In the presence of:**

1. Applicant in person.
2. Mr. Michuki for the Respondent.

