



**Okwayi v Republic (Miscellaneous Criminal Application E147 of 2021)
[2022] KEHC 16985 (KLR) (20 December 2022) (Ruling)**

Neutral citation: [2022] KEHC 16985 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
MISCELLANEOUS CRIMINAL APPLICATION E147 OF 2021
GWN MACHARIA, J
DECEMBER 20, 2022**

BETWEEN

PETER ONDIEK OKWAYI 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 E700 of 2021 with the offence of stealing by servant contrary to section 281 of the *Penal Code* and an alternative count of handling stolen goods contrary to section 322(1)(2) of the *Penal Code*. He was convicted of the main count on his 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. He moved the court vide a chamber summons filed on September 8, 2021 which is supported by an affidavit sworn by the applicant and filed on even date. Attached to the affidavit is what the applicant referred to as ‘memorandum of sentence review’ which basically is a list of grounds of mitigation, *inter alia*, that he has reformed, is a law abiding citizen and is the sole bread winner of his family.
3. 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.
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. Section 281 of the *Penal Code* provides that:

“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 of seven years.”

6. According to the particulars of the charge, the goods listed to have been stolen were a motor cycle, a car washing machine, bush cutter machine, lawn mower, camping tent, knapsack spray, gas cylinder 15 kg, internet supply equipment, assorted shoes and clothes total valued at Kshs 2 million the property of Marvine Gaye which came to the possession of the applicant by virtue of his employment to the said Marvine Gaye. Of all the stolen goods, the following were recovered; bush cutter machine, car washing machine, lawn mower machine and motor cycle.
7. Although the applicant pleaded guilty, it is clear that he stole goods that were truly valuable. Besides, being an employee of the complainant, it was expected that he handled the goods with utmost trust and faith. He abused this trust by stealing the goods. He does not deserve clemency. All the same, having regard that most of the valuable goods were recovered and the applicant pleaded guilty thus saving the court's precious time, prudence dictated that a more lenient sentence be imposed. 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.
8. 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.
9. 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 two years imprisonment commencing from the date of arrest, which is April 13, 2021.

DATED AND DELIVERED AT NAIVASHA THIS 20TH DECEMBER, 2022.

GW NGENYE-MACHARIA

JUDGE

In the presence of:

Applicant in person.

Mr Michuki for the respondent.

