



**Tole v Republic (Criminal Miscellaneous Application E011 of 2020)
[2021] KEHC 9824 (KLR) (12 February 2021) (Ruling)**

Neutral citation: [2021] KEHC 9824 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CRIMINAL MISCELLANEOUS APPLICATION E011 OF 2020
JO NYARANGI, J
FEBRUARY 12, 2021**

BETWEEN

SEBASTIAN TOLE APPELLANT

AND

REPUBLIC RESPONDENT

RULING

1. The Appellant herein was charged and convicted by Hon.E.Nyakundi Resident Magistrate Wundanyi Law court for the offence of stealing farm produce contrary to section 8(1) of the [stock and produce theft Act](#) Cap 355 in that he stole 71 cobs of maize valued at Kshs 1,420/= . In the alternative, he was charged with handling stolen property contrary to section 322(1) (2) of the [penal code](#).
2. He was convicted on his own plea of guilty for the main count and subsequently sentenced to serve 8 years imprisonment. On arriving at this sentence, the court took into account mitigation and the appellant's previous record in that he was found to have been convicted and sentenced to six months imprisonment for the offence of stealing. The court further considered the Probation Officer's report which recommended custodial sentence on grounds that the appellant was a perpetual or serial offender specialized in stealing farm produce. That the community did not want him at home until harvesting period was over.
3. Aggrieved by the said sentence imposed on the 25.7.2018, the appellant moved to this court vide chamber summons dated 6th July,18 seeking revision of his sentence on grounds that it was excessive; he has spent considerable period in prison and, that he has since reformed.
4. During the hearing, the appellant pleaded for leniency. He stated that he has been trained and acquired skills in farming hence the need for non-custodial sentence to go home and apply those skills. He told the court that he has now served 2 years and five months hence sufficient punishment.



5. On their part, the state opposed the application for revision of sentence on grounds that the appellant is a repeat offender who has not reformed. That the trial court was lenient in giving 8 years instead of the maximum 14 years provided by law.
6. I have considered the application for revision visavis the sentence imposed against the seriousness of the offence committed. The appellant abandoned his appeal against conviction and pleaded for review of his sentence.
7. This court is seized of revisionary powers pursuant to section 364(1) of the CPC. The appellant did not deny the charge. He saved the court precious time. In considering the appropriate sentence to mete out, the court must be guided by the sentencing policy guidelines which among other factors must take due consideration of the proportionality test.
8. The sentence imposed must be proportionate with the offence committed. See Susan Peter Ebei Vs Republic Karbarnet Criminal Appeal No 79/2017 where the court held that a sentence of four years was not proportionate to the theft of one sheep. In this case, the sentence of 8 years is not proportionate to stealing 71 maize cobs worth Kshs 1,410/=
9. By all standards the sentence imposed herein is harsh the maximum penalty provided for the offence in question being 14 years notwithstanding. It is my finding that the period of 2 1/2 years already served is sufficient punishment. To that extent, the sentence of 8 years imposed against the appellant is hereby reviewed and substituted to the period already served. Accordingly, the appellant shall be set free unless or otherwise lawfully held.

Right of appeal 14 days.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 12TH DAY OF FEBRUARY 2021

J.N. ONYIEGO

JUDGE

