



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL REVISION NO. 6 OF 2020

MAHASI DAVID KICHUMA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. In his undated chamber summons filed under a certificate of urgency on 22nd January 2020, the applicant, *Mahasi David Kichuma* applied for review of the sentence passed against him by the trial court in Kibera Chief Magistrate's Criminal Case No. 5790 of 2014.

2. In support of his application, the applicant swore an affidavit in which he deposed that he was convicted and sentenced to four years' imprisonment for the offence of stealing; that he was a first offender; that he was remorseful after reflecting on the offence he committed and that he was now reformed both spiritually and mentally.

On the above grounds, he sought that his sentence be reduced or be substituted with a non custodial sentence.

3. At the hearing, both the applicant and learned prosecuting counsel *Ms Chege* chose to prosecute the application by way of oral submissions. In his submissions, the applicant re-iterated his prayer for reduction of sentence adding that he was a family man and was remorseful.

4. The respondent through *Ms Chege* opposed the application. She submitted that the sentence meted out by the trial court should not be reduced since in her view, it was very lenient considering that punishment for the offence of theft is a maximum of three years imprisonment and taking into account the value of what was stolen which was an equivalent of KShs.134,500. She however conceded that the sentence imposed in default of payment of fine was illegal and should be reviewed.

5. I have considered the application and the oral submissions made by both parties. I have also perused the record of the trial court. The record shows that after a full trial, the applicant was convicted for the offence of stealing contrary to *section 268 (1)* as read with *section 275* of the *Penal Code*. Upon conviction, he was sentenced to pay a fine of KShs.500,000 in default to serve four years imprisonment.

6. *Section 28 (2)* of the *Penal Code* provides for default sentences depending on the amount of fine imposed. The section expressly stipulates that the default sentence for fines exceeding KShs.50,000 should be a maximum of twelve (12) months imprisonment.

7. As stated above, the applicant was in this case fined KShs.500,000 in default to serve four years imprisonment. Having perused the court record, I have no basis to fault the trial magistrate's discretion in her decision to impose a fine of KShs.500,000 but she clearly misdirected herself by imposing a sentence of four years imprisonment in default of payment of that fine. The default sentence was clearly illegal as the law prescribes a maximum default sentence of 12 months' imprisonment in such a case. The default sentence is consequently set aside and is substituted with a term of 12 months' imprisonment.

8. The trial court's record shows that the applicant was sentenced on 9th October 2019. He has therefore served sentence for a period in excess of the twelve months he was legally supposed to have served in default of payment of fine.

In the circumstances, it is my finding that he should not spend another single day in prison.

9. Consequently, I allow the application and order that the applicant be released forthwith unless otherwise lawfully held.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 30TH DAY OF JUNE 2021.

C. W. GITHUA

JUDGE

In the presence of:

Applicant in person at Nairobi West Prison

Ms Ndombi for the respondent

Ms Karwitha: Court Assistant