

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION-MILIMANI COURT

MISC. CRIMINAL APPLICATION NO. E082 OF 2021

GEORGE DIBONDO OYULA.....APPLICANT

VERSES

REPUBLIC.....RESPONDENT

RULING

1. **George Dibondo Oyula**, the Applicant, was convicted for the offence of stealing contrary to **Section 268(2) (a)** as read with **Section 275** of the Penal Code. Particulars of the offence were that on the 14th day of December, 2020, at Accra road, within Nairobi County, he stole a braille note taker and laptop make HP all valued at Ksh. 535,000/-and sentenced to serve eighteen(18) months imprisonment.

2. Through an application filed herein on the 18th March, 2021, he seeks to be given an option of fine. In an affidavit supporting the application he avers that the time he has spent in jail has made him learn a lesson such that he will never engage in crime.

3. In response thereto the State/Respondent opposed the application stating that the Applicant having pleaded guilty, the sentence imposed was lenient since the sentence provided for the offence is three (3) years imprisonment.

4. Sentence is a matter of discretion such that an appellate court will normally not interfere with exercise of discretion by the trial court unless it is demonstrated that the court acted on wrong principle; ignored material factors; took into account irrelevant considerations; and if the sentence is manifestly excessive. This was stated by the Court of Appeal in **Bernard Kimani Gacheru Vs. Republic [2002] eKLR**; where it was held that:

“It is now settled law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account some wrong material, or acted on a wrong principle. Even if, the Appellate Court feels that the sentence is heavy and that the Appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, any one of the matters already stated is shown to exist.”

5. In the instant case the Applicant was the guide of the complainant, a person who was visually impaired. It was stated that after stealing he sold the exhibit to the Chairperson of the Kenya Society for the blind who alerted the police. And after being charged, he continued threatening the complainant which was an abuse of the trust that the complainant bestowed unto him.

6. In meting out the sentence the trial court took all these factors into consideration. In the circumstances, the sentence meted out that was lawful was not excessive.

7. In the premises, the application is bereft of merit, accordingly, it is dismissed.

8. It is so ordered.

Dated, Signed and Delivered Virtually this 28th day of July, 2021.

L. N. MUTENDE

JUDGE