



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL REVISION CASE 33 OF 2020

ERICK KIPLAGAT ROTICH.....APPLICANT

VERSUS

REPUBLIC..... RESPONDENT

RULING

The applicant herein **ERICK KIPLAGAT ROTICH**, faced a charge of stealing a motor vehicle contrary to section 278A of the Penal Code, before the lower court, in Kibera Chief Magistrate's court, Criminal Case Number 4278/2013. After trial, he was convicted and sentenced on 12.7.2019. He was sentenced to pay a fine of Kshs.2 million and to also serve 1½ years imprisonment. In default in paying the fine set, it was ordered that he serves 1 more year in prison. He was also ordered to compensate the complainant for the loss with the complainant being at liberty to take civil recovery proceedings in case the applicant defaulted in the order of compensation.

By this application dated 14.1.2020, the applicant has urged this court to review the above sentence and remove the order of payment of the fine of 2 million shillings or to serve an additional 1 year. He has pleaded that the court do order that he only serves 1½ years imprisonment term. In his oral submissions in court, he even pleaded that the sentence be reviewed to have him serve 1 more year imprisonment term without the option of fine.

In response to this application, Mr. Mutuma for the state, submitted that under section 278A of the Penal Code, the sentence is 7 years imprisonment. That the court was therefore right to order for a fine and in default 1 year imprisonment. It was submitted that the sentence meted out was lenient and the application ought to be dismissed.

I have considered this application and the submissions made on it by both the applicant, and the counsel for the Respondent. The applicant was convicted and sentenced on an offence of stealing a motor vehicle contrary to section 278A of the Penal Code. the said section reads;

“If the thing stolen is a motor vehicle within the meaning of the Traffic Act, the offender is liable to imprisonment for 7 years.”

The applicant has urged this court to exercise its powers of revision to alter his sentence to the extent of removing the option of fine and leaving only the imprisonment term, even enhancing the same if the court finds fit.

The powers of this court on revision are spelt out under section 364 of the Criminal Procedure Code. The powers are same as those regarding appeals, under section 354 of the act. At section 354(2)(ii), the court;

“May alter the finding, maintaining the sentence, or with or without altering the finding, reduce or increase the sentence.”

And at sub-article (iii), the court may;

“with or without a reduction or increase and with or without altering the finding, alter the nature of the sentence.”

The application herein seeks the alteration of the sentence with a view to removing the fine component even at the possibility of increasing the imprisonment term. The above provisions (section 364 and section 354) gives this court the jurisdiction to grant the orders of revision sought herein.

Being persuaded on the merit of this application, I allow the same, alter the sentence of the lower court to the extent of the fine and imprisonment term only. I order that applicant shall serve an imprisonment term of 3 years. For avoidance of doubt, this term shall run from 12.7.2019, the date of sentence by the trial court.

D. O. OGEMBO

JUDGE

26.7.2021.

Court:

Read out in presence of the applicant (Nairobi Remand), and Mr. Kiragu, counsel for the state.

D. O. OGEMBO

JUDGE

26.7.2021.

‘O’

FROM: HIGH COURT APPELLATE SIDE

TO: G.K. NAIROBI REMAND @ GK.PRISON ALLO.

INFO: PHQ.

26TH JULY 2021

HCCR REV. NO. 33 OF 2020

HIGH COURT CRIMINAL REVISION NO. 33 OF 2020 ORIGINATING FROM THE CHIEF MAGISTRATE’S COURT AT KIBERA CRIMINAL CASE NO. 4278 OF 2013. APPLICANT’S **ERICK KIPLAGAT ROTICH NBA/4934/019/LS** IS REVISED TO SERVE 3 YEARS IMPRISONMENT. FOR AVOIDANCE OF DOUBT, THIS TERM SHALL RUN FROM 12.7.2019, THE DATE OF SENTENCE BY THE TRIAL COURT. IT IS SO ORDERED.

DEPUTY REGISTRAR