

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

MISC. CRIMINAL APPLICATION NO. 34 (E155) OF 2021

GEOFREY ETHINYEN OKELO.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant, Geoffrey Ethinyen Okelo, was convicted of the offence of **Burglary** and **Stealing** contrary to **Section 304** as read with **Section 279** of the **Penal Code**. He was sentenced to serve five (5) years imprisonment on 15th May 2019. This was in Kitale CMCCRC No. 3110/2019. The Applicant has been in prison serving the custodial sentence since then. He has now filed an application before this court seeking revision of his custodial sentence.

In his application, the Applicant stated that at the time of his arrest, he was a secondary school student. During the period of his incarceration, he had learnt his lesson. He had undertaken several courses that have made him a better person. He has learnt a trade that will serve him upon his release should the court favourably, consider his application. The Applicant stated that he was twenty one years of age and should in the circumstances be given a second chance at life. Mr Omooria for the State left the issue of sentence to the court.

In sentencing the Applicant to serve the custodial sentence, the trial magistrate was exercising judicial discretion. This court cannot interfere with such exercise of judicial discretion unless it is established that the trial court failed to take into consideration a relevant factor or took into consideration an irrelevant factor or failed to consider the applicable sentencing Principles. This court will interfere with such sentence, if it is established that the same was harsh or excessive in the circumstance. In the present application, this court cannot fault the trial magistrate for reaching the verdict that was reached. It was legal. It took into account the severity of the offence that was committed.

However, this court noted that since his incarceration, the Applicant has reformed. He is remorseful and regrets the decision that led him to commit the offence. He has learnt his lesson. It appears that the period of two years that the Applicant has been in prison, he has learnt that crime does not pay. This court is of the view that the Applicant should be given a second chance at life.

In the premises therefore, the custodial sentence of the Applicant is commuted to the period served. The Applicant is ordered set at liberty forthwith and released from prison unless otherwise lawfully held.

DATED AT KITALE THIS 26TH DAY OF OCTOBER, 2021.

L. KIMARU

JUDGE