



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KITALE**

**MISC. CRIMINAL APPLICATION NO. 97 (E173) OF 2021**

**SAMWEL MACHARIA MURURI .....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

The Applicant, **Samwel Macharia Mururi** was convicted of the offence of **Stealing by Servant** contrary to **Section 281** of the **Penal Code**. The trial Magistrate held that the prosecution had established to the required standard of proof that the Applicant stole the sum of Kshs 380,000/- from his employer. He was sentenced to serve five (5) years imprisonment on 8<sup>th</sup> July 2019. The Applicant has been in prison for slightly less than two years and four months.

The Applicant has applied to this court for a revision of his sentence. He pleads with the court to take into consideration the fact that in the period that he has been in prison he had been sufficiently punished. He had learnt his lesson. He had reformed. During the period of his incarceration, his family has suffered. He was of the view that he was now ready to return back to society having repaid his just debts. Mr Omooria for the State was opposed to the Applicant's plea for reduction of sentence. He pointed out that the Applicant had not indicated how he was going to compensate his employer were the court to exercise its discretion in his favour. He was of the view that the custodial sentence that was imposed upon the Applicant was in fact lenient in the circumstances.

This court has considered the Applicant's plea for reduction of custodial sentence. When the trial magistrate sentenced the Applicant to serve the custodial sentence, he was exercising judicial discretion. That exercise of discretion can only be interfered with if it is established that the trial court did not take into consideration relevant factors or took into consideration irrelevant factors. This court will also interfere with the sentence if it is established that the sentence was either harsh, excessive or did not meet the ends of justice.

In the present application, it was clear to the court that the custodial sentence imposed on the Applicant was legal. However, this court has considered the value of the stated stolen subject matter. It has also considered the fact that the Applicant has been in prison for a period of about two years and four months. This court formed the opinion that the Applicant has been sufficiently punished. It was also evident that the period that he has stayed in lawful custody has done him some good. He has learnt that crime does not pay. He has undertaken a course that will enable him to be economically engaged upon his release from prison.

In the premises therefore, the custodial sentence that was imposed by the trial Magistrate on the Applicant is hereby commuted to the period served. He is ordered set at liberty forthwith unless otherwise lawfully held. It is so ordered.

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

**L. KIMARU**

**JUDGE**