



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CRIMINAL REVISION NO. E0266 OF 2021

PETER NGUGI MUNGAI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(Being a Revision of the Order of the Honourable Riany, SRM in Criminal Case No. E2168 of 2021 at the Chief Magistrate's Court at Thika dated 11th August, 2021)

RULING

1. **PETER NGUGI MUNGAI** was convicted on his own plea of guilty before the Thika Chief Magistrate's Court with the offence of stealing contrary to **Section 268** as read with **Section 275** of the Penal Code. He was sentenced to imprisonment for 1½ years.
2. He seeks this Court to review that sentence.
3. The High court has supervisory jurisdiction as provided under **Article 165(6)** and **(7)** of the Constitution:-

“(6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.

(7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.

4. Under **Section 362** of the High Court may call and examine record criminal proceedings. That section provides:-

“The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of any subordinate court.”

5. The power to revise orders made by the subordinate court is under **Section 264** of Criminal Procedure Code which provides:-

“(1) In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may:-

(a) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by Sections 354, 357 and 358, and may enhance the sentence;

(b) in the case of any other order other than an order of acquittal, alter or reverse the order.

6. The applicant on the charge being read out before the trial court stated “true”. The facts of the case were read out which are that:-

“Complainant who resides with 1st accused (the applicant) his cousin and when going (sic) to work leaving his young son and wife home. On 9/8/2021 he went to work at Jua Kali and left a Vig phone valued Kshs.25,000/-. He asked his son if he saw and

said no. He reported and on 10/8/2021 he came with 2 officers to his house and found 1st accused (applicant) had already been arrested and on interrogation couldn't avail phone was arrested (sic) and charged thereon."

7. The applicant responded:-

"Facts are true."

8. The trial Court thereafter convicted the applicant on his own plea of guilt. The applicant was confirmed by the prosecution to be a first offender. The applicant addressing the trial court sought leniency in his sentence. The trial court sentenced the applicant to 1½ years imprisonment.

9. The applicant seeks review of his sentence on the following grounds:-

- a) *The applicant stole the phone that belonged to his father.*
- b) *The applicant is first offender.*
- c) *The applicant is 22 years and finished schooling in the year 2018.*
- d) *The applicant has been attending apprentice at his father's garage in Thika.*
- e) *The applicant admitted the offence.*
- f) *The offence was committed within a family environment.*
- g) *The complainant who is the father of the applicant has forgiven him.*

10. **Section 275 of the Penal Code** is the sentencing section for the offence of theft. It provides:-

"Any person who steals anything capable of being stolen is guilty of the felony termed theft and is liable, unless owing to the circumstances of the theft or the nature of the thing stolen some other punishment is provided, to imprisonment for three years."

11. The trial court in sentencing ought to have considered the circumstances of the theft that it took place in a family environment and that applicant was first offender. Bearing those circumstances in mind, I confirm that the applicant sentence of 1½ years was excessive. The trial court did not also state that it bore in mind those circumstances as it sentenced the applicant. The applicant has been in custody since 11th august, 2021. In my view, the sentence he has so far served suffices as sentence for the offence.

12. I accordingly grant the following order:-

- (a) **Peter Ngugi Mungai** sentence in Thika Criminal case No. E2168 of 2021 is hereby quashed.
- (b) **Peter Ngugi Mungai** is hereby sentenced to the period already served.
- (c) I order **Peter Ngugi Mungai** to be set free unless otherwise lawfully held.

RULING DATED AND DELIVERED AT KIAMBU THIS 20TH DAY OF DECEMBER, 2021.

MARY KASANGO

JUDGE