

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO.5 OF 2020

PRISCILLAR SYOMBUA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant, Priscillar Syombua was convicted of **stealing** contrary to **Section 268** read with **Section 275** of the **Penal Code**. The trial court after full trial, held that the prosecution had established to the required standard of proof beyond any reasonable doubt that on diverse dates between 5th October 2012 and 11th July 2014, at Ruaraka area within Nairobi County, the Applicant stole the sum of Ksh 226,000/-, the property of Child Support Program, Ruaraka.

The Applicant was ordered to pay a fine of Ksh 20,000/- or in default serve twelve (12) months imprisonment. In addition, she was ordered to compensate the complainant the sum of Ksh200,000/-. She was further convicted of **making a false document contrary to Section 357 (a) of the Penal Code**. She was sentenced to pay a fine of Ksh10,000/- or serve six months' imprisonment in respect of each count. The Applicant did not pay the fines. Neither has she compensated the Complainant. She is therefore serving the default custodial sentences.

The Applicant moved this court by way of an application seeking the review of her sentence. She told the court that she was a first offender, was remorseful, contrite and regretted the crimes that she had committed. She was a mother of three (3) children who have been deprived of motherly love during the period of her incarceration. She has been in prison for a period of one year and two months. For added measure, she stated that she was taking care of a sickly mother. She was of the view that she had been sufficiently punished in the period that she has been in prison. She urges the court to exercise leniency on her and give an appropriate sentence that will provide her relief.

Mr. Momanyi for the State opposed the application for review of the default custodial sentence that the Applicant is currently serving. He submitted that the Applicant had not shown remorse or contrition by refunding to the Complainant the money that she stole. He pointed out that the Applicant betrayed the trust placed on her by stealing money meant for the vulnerable members of the society. He urged the court to disallow the application.

The Applicant seeks the review of a sentence meted by the trial court. It is trite that this court cannot interfere with the sentencing discretion by the trial court unless it is established that the trial court took into consideration an irrelevant factor or failed to take into consideration a relevant factor or applied the wrong principles of the law (see **Shadrack Kipkoeh Kogo Vs R Eldoret C A Criminal Appeal No. 253 of 2003**). In the present application, it was clear to this court that indeed the Applicant has been sufficiently punished in the period that she had been in prison serving the default custodial sentences. The trial magistrate did not err in law when he sentenced the Applicant to the sentences that are the subject of this application. However, taking into consideration the period that the Applicant has been in lawful custody, and the amount that was stolen, this court is of the considered view that the Applicant has paid her just debt to the society. The custodial period of one year and three months' imprisonment is a just punishment.

In the premises therefore, this court sets aside that default custodial sentences imposed by the trial court including the order that the Applicant pays compensation to the Complainant and instead commutes the default custodial sentences of the Applicant to the period served. She is ordered set at liberty forthwith and released from prison unless otherwise lawfully held.

It is so ordered.

DATED AT NAIROBI THIS 28TH DAY OF OCTOBER 2020

L. KIMARU

JUDGE