



**REPUBLIC OF KENYA**

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

**CRIMINAL REVISION NO. 25 of 2019**

**RNN.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

The applicant herein was charged with two counts of house breaking and Stealing Contrary to Section 304 (1)(b) and Section 279(b) of the Penal Code, Cap 63 Laws of Kenya.

The particulars of the offence in count 1 were that; on the 11<sup>th</sup> day of March 2017, at Siakago town Nthawa Location Mbeere North Sub County within Embu County, jointly with others not before court broke and entered the building used as a dwelling house by AKN and stole a motor cycle registration number KMDM xxxx make Skygo red, 2 techno mobile phones, one jacket, one helmet, one pair of black leather shoes, one pair of black riding leather gloves, one pliers, one torch, one pair of open shoes, safaricom wallet and shaving machine the properties of the said AKN.

The particulars of count II contained in the amended charge sheet were that; on the 11<sup>th</sup> day of March, 2017 at Siakago Town Nthawa Location, Mbeere North sub-County within Embu Count jointly with others not before court broke and entered the building used as a dwelling house by AKN and stole cash Kshs. 5,300/= the property of LWN.

In the alternative charge to Count 1, he was charged with handling stolen goods Contrary to Section 322(1) of the Penal Code, Cap 63. The particulars of the offence are that, on the 19<sup>th</sup> March, 2017 at [particulars withheld] Village in Embu East Sub-County, the accused otherwise than in the cause of stealing, dishonestly retained a motor cycle registration number KMDM xxxx make Skygo red in colour knowingly or having reason to believe that it was stolen property.

Upon hearing the matter, the trial court convicted the applicant with the offences of house breaking and stealing and sentenced him to serve five (5) years and four (4) years respectively which sentence the learned Magistrate ordered to run concurrently.

The applicant did not appeal against either the conviction or sentence but instead has moved the court for revision of the sentence.

In his application, he states that he is a first offender and has no previous record of conviction, that he has suffered a lot while in custody for a period of more than two (2) years; that he is the breadwinner to his family and that he is currently in bad health as he is suffering from TB. He has asked the court to consider substituting his sentence with a non-custodial sentence.

In opposing the application counsel for the Respondent submitted that the sentence meted out to the applicant is legal and lawful bearing in mind the charges that the applicant was facing. She also submitted that the learned magistrate took into account the circumstances of the case including the fact that the petitioner is not a first offender as he had been previously convicted in criminal case number, 226 of 2017.

Counsel invited the court to put the complainants at the front and consider their interest.

The Court has considered the application and the submissions by the applicant and counsel for the Respondent.

The powers of the High Court in revision is contained in Section 362 through to Section 366 of the Criminal Procedure Code (Cap 75).

Section 362 provides;

***“362, 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 such subordinate court”*

Section 364(5) provides as follows;

***“Unless an appeal lies from a finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed.”***

It is clear that going by the provisions of section 364 (5) (Supra) the revisionary jurisdiction of the High Court can only be invoked where there are glaring acts or omissions but should not be a substitute for an appeal.

I note from the record that the applicant did not appeal against either conviction or the sentence.

The reasons that he has given have no basis in law in an application for revision.

In the end, I find that the application has no merits and the same is hereby dismissed.

Orders accordingly.

**Dated, Delivered and signed at EMBU this 23<sup>rd</sup> day of October, 2020.**

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**L. NJUGUNA**

**JUDGE**

**In the presence of:**

..... **for the Applicant**

..... **for the Respondent**