

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL REVISION CASE NO. 58 OF 2020

PHANUEL LUBANGA.....APPLICANT

VERSUS

DIRECTOR OF PUBLIC PROSECUTIONS.....RESPONDENT

RULING

The applicant, **PHANUEL LUBANGA** filed his Notice of Motion herein on 2.3.2020. It is brought under section 362 and 364 of the Criminal Procedure Code. The application basically seeks that the sentence imposed on him of 3 years imprisonment (on 2 counts) be revised and he be given a non-custodial sentence. The prosecution hasn't opposed this application and left it for the court to decide.

Before the lower court, the applicant had been charged with theft of mobile phones, with a combined total value of about Kshs.180,000/=. On each count, he was sentenced to serve 3 year's imprisonment. The sentences were ordered to run concurrently.

Under the penalty section of the offence of theft, section 275 of the Criminal Procedure Code,

“Any person who steals anything capable of being stolen is guilty of a 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 3 years.

The powers of the High court on revision, under section 354 of the Criminal Procedure Code (section 354 (1)(a)) include reversing the finding and sentence, and acquit or discharge the accused, or order him to be tried by a court of competent jurisdiction (354(3)(a)(i) and it extends to altering the finding, maintaining the sentence, or with or without altering the finding, reduce or increase the sentence (ii). The court may also alter the sentence (iii).

In carrying out its mandate under the above section 354 of the Criminal Procedure Code, the court must take into account the circumstances of the case. In our instant case, the court has noted the value of the stolen items at a total of about Ksh.180,000/=. Also, the fact that the applicant is a first offender, the attitude of the complaints as contained in the pre-sentence report, and the general mitigation of the accused, lastly that the prosecution has not opposed this application for revision, basically on grounds that the sentence was excessive.

Considering the above circumstances, I concur with the prosecutions' position that the sentences of 3 years meted out against the applicant are excessive. I therefore find that the application for revision of sentence filed herein by the applicant on 2.3.2020 has merit.

I accordingly revise and reduce sentence meted out against the applicant from the terms of 3 years on each count to sentences of 2 years imprisonment on each count. The sentences shall run concurrently as earlier ordered.

HON. JUSTICE D. OGEMBO OGOLA

27th November 2020

Court:

Ruling read out in open court (on-line) in the presence of the applicant and Mr. Chebii for the state.

HON. JUSTICE D. OGEMBO OGOLA

27th November 2020