



**REPUBLIC OF KENYA**

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

**HC. CR. REV. NO. 131 OF 2018**

**NDOLO KITINGU MUTUA.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**(Being an appeal against the sentence dated 09.05.2017 in Criminal Case No. 287 of 2016 in Machakos Law Court before Hon. A. Lorot – SPM)**

**RULING OF THE COURT**

1. The Applicant herein **Ndolo Kitingu Mutua** was charged with the offence of stealing stock and an alternative count of handling stolen goods contrary to **Section 278 and 322(2) of the Penal Code** respectively.
2. He pleaded not guilty to both counts before Hon. C. K Kisiangani, RM in **Machakos Cr. Case No. 287/2016**. He was convicted on the first count and sentenced to 7 years imprisonment, after mitigations being considered.
3. He has not challenged the conviction and initially challenged the sentence and later abandoned the appeal. He applied for revision of sentence stating that he is a first offender. He stated that he has been in custody for a long period in remand; that he is a first offender of good conduct and the sole breadwinner of his entire family.
4. The state has opposed the application vide submissions filed on 12<sup>th</sup> November, 2018. Learned Counsel for the Respondent and stated that the mitigations advanced do not warrant the interference with the discretion of the trial court. The state has submitted that the offence that the appellant was charged with carries a sentence of upto 14 years and thus the 7 years is lenient, safe and within the law. Counsel cited the case of **Wanjema v R (1971) EA 493** and argued that the discretion of the trial court in sentencing will only be interfered with if the trial court overlooked some material factors, took into account some immaterial factors, acted on a wrong principle or the sentence is manifestly excessive in the circumstances of the case.

**Analysis**

5. I have considered the plea by the Applicant/Convict and noted that there is no Probation Officer's Post Sentence Review Report. At this point in time I am unable to consider the request for lack of the said report.

**Determination**

6. In the premises, I deny the request at this juncture and make an Order directing the Probation Officer, Machakos County to prepare and file a Post Sentence Review Report, thereafter the Applicant is at liberty to move this honourable court for his application to be considered.

**Dated, Signed and Delivered at Machakos this 29<sup>th</sup> day of January, 2019.**

**D.K. KEMEI**

**JUDGE**