

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAJIADO

CRIMINAL REVISION NO. 5 OF 2019

NAOMI CHEPKEMOIAPPLICANT

VERSUS

REPUBLICRESPONDENT

RULING ON REVISION

1. **Naomi Chepkemoi**, the applicant, was charged with the offence of stealing by servant contrary to Section 268(1) as read with Section 281 of the Penal code. Particulars of the offence were that between 19th and 20th January, 2019 at Avenue area in Ongata Rongai township within Kajiado County being a servant to **Delilah Mora Mokaya**, she stole (i) 33 assorted clothes (ii) one brown handbag; (iii) one printed handbag (iv) I black travel bag (back bag) (v) 2 clutch bags (vi) a pair of black female boots, (vii) hair food (hair store) 454 g, (viii) Vaseline (blue seal) 250 m (ix) hair spray (aliyana) 200 ml (x) 2 pairs of black female flat shoes (xi) hair polisher (olive oil) 177ml. (xii) hair spray (olive oil) 275 ml all valued at Kshs. 50,000/- the property of Delilah Mora Mokaya which came to her possession by virtue of her employment.
2. She was also charged with an alternative charge of handling stolen property contrary to Section 322(1) of the penal code. Particulars being that on 30th January, 2019 at 5th Kipset branding Centre Kericho township within Kericho County, otherwise than in the course of stealing, dishonestly obtained 33 assorted clothes, one brown handbag; one printed, I black travel bag (back bag), 2 clutch bags, a pair of black female boots, hair food (hair store) 454 g, (Vaseline (blue seal) 250 m, hair spray (aliyana) 200 ml, 2 pairs of black flat shoes (female) (x1) hair polisher (olive oil) 177ml. (xii) hair spray (olive oil) 275 ml all valued at Kshs, 50,000/- known or having reason to believe it (sic) to be stolen goods.
3. The applicant pleaded guilty to the main charge and was convicted on her own plea and sentenced to 3 years imprisonment. She has now applied to this court for revision of the sentence. In her application she urges this court to consider reviewing her custodial sentence to a non-custodial sentence and preferably a fine so that she can go and look after her children and her siblings. She states that she and her siblings are orphans and that her siblings have been left with nobody to look after them. She further states that she has a young child and there is no body to look after her following her conviction and custodial sentence.
4. The applicant states that she is a first offender and remorseful for what happened; that she is aged 19 years old and a single parent; that she is the sole bread winner for her child and her siblings the youngest of her siblings was 6 months old when their mother passed on and she is now 4 years old. The applicant states that she is the first born in their family and the only person responsible for them. According to the applicant, her child and her siblings are now under the care of their old and sickly grandmother who is not able to cater and provide for them. She claims that she was tempted to take her employer's property purely meant to compel her employer to pay her salary after she had worked for several months without pay.
5. I have considered the application for revision and perused the records of the trial court. The applicant pleaded guilty to the charge preferred against her was convicted on her own plea of guilty and after mitigation which the trial court considered she was sentenced to 3 years imprisonment. In her mitigation, the applicant told the trial court that she was an orphan and had a young child. The prosecution also told the court that the applicant was a first offender a fact the applicant reiterates before this court.
6. The applicant was charged with of stealing by servant contrary to section 268(1) of the Penal Code as read with section 281. The section provides for a sentence of 7 years. The applicant was however sentenced to serve 3 years and has now asked this court to reconsider that sentence and, if possible, replace it with a non-custodial sentence preferably a fine to enable her go and take care of her young child and orphaned siblings. The applicant pleaded guilty and offered mitigation. In sentencing her, the trial court noted that mitigation but stated that she was not remorseful.
7. Revisionary jurisdiction of the court is granted by both the constitution and the Criminal Procedure Code Cap 75. Sections 362 and 364 of the Code provide for various aspects of review. Section 362 provides that the High Court has power to 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.
8. On the other hand, section 364 (1) provides that 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.***
9. In the present application, the applicant has sought this court's exercise of its judicial revisionary jurisdiction to review her sentence and, where possible, replace it with a non-custodial sentence to enable her rejoin her young child and siblings who have been left in the care of their old and ailing grandmother.

10. I have gone through the record of the trial court and noted the applicant's mitigation before sentence. In particular, the applicant stated that she was 19 years old with a young child who she wanted to join her in prison. The trial court's record does not indicate whether the child was reunited with the applicant as she wished or not. I also note that all the stolen items were recovered and returned to the owner and, therefore, the complainant lost nothing save some little inconvenience.

11. The applicant was arrested on 30th January 2019 and arraigned on 1st February 2019. She convicted and sentenced the same day. She has been in prison since then which means she has served sentence for close to 6 months and must have learnt a lesson from her mistake. Taking into account the circumstances under which the offence was committed, the age of the applicant and the fact that she is a single mother and the sole bread winner for her young child and her siblings, I am persuaded that this is a proper case for invoking the revisionary jurisdiction in favour of the applicant.

12. For the above reasons, the application for review is allowed. The applicant's sentence is hereby reduced to the period already served. The applicant is set at liberty unless otherwise lawfully held.]

Dated Signed and Delivered at Kajiado this 29th Day of July 2019

E C MWITA

JUDGE