

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO. 493 OF 2019

KENNETH MUINDE NYONGESA.....1ST APPLICANT

VINCENT AUJENCHE OMLUNDI.....2ND APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The Applicants were charged with the offence of attempt to steal a motor vehicle contrary to **Section 389 of the Penal Code**. It was alleged that on 6/3/2018 at Commercial Parking Garage within JKIA in Nairobi, attempted to steal motor vehicle Reg. No.KCN 738X make Isuzu DMAX dust paper in colour, Valued at Kshs. 3,000,000/=, the property of Teresia Wairimu Nyoike.

2. After the trial, they were convicted and sentenced to each serve two years imprisonment.

3. A look at the trial proceeding shows that they were first offenders, reasons wherefore, the first line of punishment ought to have been the option of a fine. I do agree that a non-custodial sentence is not suitable owing to the seriousness of the offence. I do also note that each of them pleaded for leniency in their mitigation. This is also echoed in this application.

4. I accordingly think that they are remorseful. I set aside the two years jail terms in respect of each of the Applicants. I substitute it with an order that each of them will pay a fine of Kshs. 200,000/= in default serve one year imprisonment.

DATED and DELIVERED this 27th day of November, 2019

G.W. NGENYE-MACHARIA

JUDGE

In the presence of:

1. Mr. Ayuo for the Applicants

2. M/s Akunja for the Respondent