

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO.4 OF 2018

GODFREY NYANSERA MAUTI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant, Godfrey Nyansera Mauti, with another, was charged with the offence of **theft of a motor vehicle** contrary to **Section 278A** of the **Penal Code**. The particulars of the offence were that on 10th May 2014 at Kenya Power Temple Road Sub-station Nairobi, the Applicant, jointly with others not before court, stole motor vehicle Registration No.KBT 344N make Isuzu Dmax double cabin valued at Kshs.2.9 million, the property of Kenya Power Company Limited. When the Applicant was arraigned before the trial magistrate's court, he pleaded not guilty to the charge. After full trial, he was convicted as charged. He was sentenced to serve five (5) years imprisonment. The Applicant is not appealing against conviction. Indeed, he has not appealed against sentence but has applied to the court to exercise its discretion and revise the custodial sentence that was meted upon him.

The Applicant told the court that he had been in custodial sentence since 2014 when he was arraigned before court. He was the only breadwinner of his family. He was suffering from abdominal ulcers and is hypertensive. He pleaded with the court to exercise leniency on him taking into consideration that the motor vehicle that was stolen was recovered, and further the fact that he was in remand custody for a period of two (2) years before his conviction. Ms. Aluda for the State submitted that the Applicant, prior to his conviction for the current offence, had been convicted for being drunk and disorderly. She asked the court to exercise its discretion and take into consideration the period that the Applicant was in remand custody before his conviction.

This court has carefully considered the Applicant's plea for reduction of custodial sentence. The Court of Appeal in **Ahmad Abolfathi Mohammed & Another –vs- Republic Criminal Appeal No.135 of 2016** (unreported) held at Page 25 of its judgment as follows:

*“As what is challenged in this appeal regarding sentence is essentially the exercise of discretion, as a principle this Court will normally not interfere with exercise of discretion by the court appealed from unless it is demonstrated that the court acted on wrong principle, ignored material factors; took into account irrelevant considerations; or on the whole that the sentence is manifestly excessive. In **Bernard Kimani Gacheru v Republic, Cr App No. 188 of 2000** this Court stated thus:*

*“It is now settled law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with the sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account, some wrong material, or acted on a wrong principle. Even if, the Appellate Court feels that the sentence is heavy and that the Appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, anyone of the matters already stated is shown to exist. (See also **Wanjema v. Republic [1971] E.A.493.**”*

This court has perused the record of the trial court. There is no dispute that the Applicant was in remand custody for a period of two (2) years before he was convicted and sentenced. The trial court acknowledged this fact before sentencing the Applicant. However, he proceeded to sentence the Applicant to serve a custodial sentence of five (5) years imprisonment. Taking into consideration the fact that the motor vehicle that was stolen was recovered, this court is of the view that that sentence was harsh and excessive in the circumstances. A lesser custodial sentence would have been appropriate. The trial court wrongly exercised its discretion when sentencing the Applicant because it did not take into consideration all the relevant factors. This court shall interfere with the said sentence.

In the premises therefore, the justice of this case demands that the custodial sentence meted on the Applicant be commuted to the period served. The Applicant is ordered set at liberty forthwith and released from prison unless otherwise lawfully held. It is so ordered.

DATED AT NAIROBI THIS 21ST DAY OF MARCH 2018

L. KIMARU

JUDGE