

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO. 30 OF 2018

EDWIN MUSAVI IKATWA APPELLANT

VERSUS

REPUBLIC RESPONDENT

RULING

This is an application for revision of sentence in which the Applicant was charged with the offence of theft of a motor vehicle contrary to **Section 268** as read with **Section 278 (A) of the Penal Code**. It was alleged that on the 12th day of September, 2013 at Safari Park View Estate in Kasarani within Nairobi County jointly with others not before court, stole motor vehicle Reg. No. KAX 010T Toyota Rav4 white in colour valued at Kshs. 780,000/= a property of Julius Mathenge Waweru.

The Applicant was convicted accordingly. He was sentenced to pay a fine of Kshs. 200,000/= in default, serve two years imprisonment. The sentence was passed on 26th January, 2018.

The Applicant only stated that the sentence should be revised downwards. He added that prior to taking plea, he was in the police custody for four days.

The respondent opposed the application with M/s Akunja submitting that the sentence was sufficient.

Under **Section 278(A) of the Penal Code**, a person convicted for theft of a motor vehicle is liable to imprisonment for seven (7) years. In the present case, the learned trial magistrate opted for a penalty of a fine with a default sentence. In that case, he ought to have been guided by **Section 28(2) of the Penal Code**. Under the provision, where the fine exceeds Kshs. 50,000/= the default sentence must not exceed twelve (12) months. No doubt then, the default sentence imposed was illegal.

In sum, the application succeeds with orders that the sentence imposed is set aside. I substitute it with an order that the Applicant shall pay a fine of Kshs. 200,000/= in default serve 12 months imprisonment.

DATED AND DELIVERED THIS 13TH DAY OF MARCH, 2018

G.W. NGENYE-MACHARIA

JUDGE

In the presence of:

1. Applicant in person
2. Miss Sigeti for the Respondent