



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT VOI

CRIMINAL REVISION NO 3 OF 2018

JULIUS MATATA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(From original conviction and sentence in Criminal Case No 17 of 2017 in the Senior Principal Magistrate's Court at Taveta delivered by Hon G. K. Kimanga (RM) on 19th December 2017)

RULING ON REVISION

INTRODUCTION

1. By a letter dated 17th January 2018 filed on 25th January 2018, the Applicant moved the court for a revision of the sentence of three and a half (3½) years imprisonment that was meted upon him on 19th December 2017 by the Learned Trial Magistrate, Hon G. K. Kimanga, Resident Magistrate in **Cr Case No 17 of 2017 Republic vs Julius Matata** at Taveta Law Courts on the ground that the said Learned Trial Magistrate sentenced him without giving him the option of a fine. The State did not oppose his application for Revision.

LEGAL ANALYSIS

2. According to the Charge, the Applicant was charged with the offence of stealing stock contrary to Section 278 of the Penal Code Cap 63 (Laws of Kenya). The particulars of the charge were that on 18th January 2017 at about 1300 hours at Kasaani Village within Taita Taveta County, he stole three (3) cows valued at Kshs 100,000/=, the property of Samuel Kiema Kivoi.

3. Section 278 of the Penal Code Cap 63 (Laws of Kenya) provides as follows:-

“If the thing stolen is any of the following things, that is to say, a horse, mare, gelding, ass, mule, camel, ostrich, bull, cow, ox, ram, ewe, wether, goat or pig, or the young thereof the offender is liable to imprisonment for a period not exceeding fourteen years.”

4. The word “**liable**” meant that that was the maximum sentence the Learned Trial Magistrate would have imposed on the Applicant after he found him guilty. It was not the maximum sentence. The import of the penalty was that a Trial Court cannot sentence a person convicted to the offence of stealing stock to more than fourteen (14) years imprisonment. The sentence of three and a half (3½) years was therefore proper and in accordance with the law.

5. In the case of **Muktar Shogolo vs Republic [2016] eKLR**, this very court reduced the sentence from ten (10) years imprisonment to five (5) years imprisonment where the appellant therein had stolen three (3) bulls valued at Kshs 150,000/=. It also arrived at the same conclusion in a **Katana Ali vs Republic [2016] eKLR** and **Mohammed Hassan vs Republic [2016] eKLR** who were the Co-Accused persons of **Muktar Shogolo in Criminal Case Number 210 of 2012 in the Senior Resident Magistrate's Court at Wundanyi**.

6. It is important to point out that sentencing is an exercise of discretion by a trial court and an appellate court ought not to interfere with such sentence unless the same is manifestly excessive, harsh and severe. Bearing the aforesaid cases in mind, it was evident that the sentence of three and a half (3½) years that the Learned Trial Magistrate imposed on the Applicant herein was within the range that this court would also have sentenced the Applicant to. In that respect, this court found no reason to disturb the penalty that was imposed on the Applicant by the Learned Trial Magistrate.

7. Having said so, as Section 253 of the Penal Code does not provide for a minimum sentence, it was the considered opinion of this court that the Learned Trial Magistrate could also have exercised his discretion to impose a fine on the Applicant.

8. Indeed, the Sentencing Policy of the Judiciary has proposed that where options are provided for both custodial and non-custodial sentence, the court ought to consider the gravity of the offence and criminal history of the convicted person and opt for the least severe sentence where a person is a first offender.

9. The Guidelines recommend that imprisonment for petty offenders ought to be discouraged as the rehabilitative objective of sentencing is rarely met when offenders serve short sentences in custody. The argument has been that short sentences are disruptive and contribute to re-offending. Generally, the Sentencing Policy Guidelines observed that there was a high rate of Recidivism associated with imprisonment.

10. In this regard, this court had due regard to Section 26(3) of the Penal Code Cap 63 (Laws of Kenya) that provides as follows:-

“A person liable to imprisonment for an offence may be sentenced to a fine in addition to or in substitution for imprisonment”

11. Further, Section 28 (1) of the Penal Code stipulates that:-

“Where a fine is imposed under any law, then in the absence of express provisions relating to the fine in that law the following provisions shall apply-(b) in the case of an offence punishable with fine or a term of imprisonment, the imposition of a fine shall be a matter of discretion of the court(emphasis court).”

12. In the circumstances foregoing, having considered the value of the period of sentence the Applicant had been sentenced to and which he was not objecting to, it was the considered opinion of this court that a fine of Kshs 250,000/= or in default a sentence of three and a half (3½) years would be a reasonable penalty.

13. Indeed, a fine ought not to be what an applicant can afford. Rather it is expected to punish an offender so that he or she does not re-offend.

DISPOSITION

14. Accordingly, this court hereby allows the Applicant’s application of Revision dated 17th January 2018 and filed on 25th January 2018 by setting aside the judgment of three and a half (3½) years imprisonment that was meted upon the Applicant herein by the Learned Trial Magistrate and replacing the same with a fine of Kshs 250,000/= and in default, to serve three and a half (3 ½) years’ imprisonment.

15. For the avoidance of doubt, the computation of three and a half (3½) years shall run from 23rd January 2017 when the Applicant was first arraigned in court as he remained in custody during the entire period of his trial.

16. It is so ordered.

DATED and DELIVERED at VOI this 8th day of March 2018.

J. KAMAU

JUDGE

In the presence of:-

Julius Matata -Applicant

Miss Anyumba - for State

Susan Sarikoki- Court Clerk