

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MISC. APPLICATION NO.23 OF 2018

DENIS SALONGAT LETORIA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant, Denis Salongat Letoria was charged and convicted of the offence of **stealing a motor cycle** contrary to **Section 268(1)** as read with **Section 278A** of the **Penal Code**. He was sentenced to serve five (5) years imprisonment. The Applicant has applied to this court to have his sentence revised. The Applicant states that the period of one (1) year and four (4) months that he was in remand custody was not taken into account by the trial magistrate when he sentenced him to serve the custodial sentence. Taking into consideration that the motor cycle that was stolen was recovered, he was of the view that the custodial sentence that was imposed upon him was harsh and excessive more so since he was a first offender. Ms. Sigei for the State opposed the application. She submitted that the trial court took into consideration the period that the Applicant was in remand custody before sentencing him to serve the custodial sentence. There was no basis upon which this court can revise the sentence.

This court has considered the Applicant's plea for reduction of sentence. From the record of the trial court, it was clear that since the Applicant took plea on 26th February 2016 to the time that he was convicted on 16th June 2017, he was in remand custody. When the Applicant was sentenced, the trial court took into account the fact that the motor cycle was recovered and also the fact that the Applicant was in remand custody for a period of 1^{1/2} years prior to his conviction. This court is aware that when the trial magistrate sentenced the Applicant to serve the custodial sentence, it was exercising judicial discretion. This court can only interfere with such exercise of discretion if it is established, either that the sentence was too harsh or too lenient in the circumstances. The court will also interfere with the imposition of the custodial sentence if it is established that the trial magistrate applied the wrong principles of the law in sentencing the Applicant or that the sentence was illegal. In the present application, it was clear to this court that taking into consideration the fact that the Applicant is a first offender, the sentence of five (5) years imprisonment that was imposed by the trial magistrate's court was harsh and excessive in the circumstances.

In the premises therefore, this court finds merit with the Applicant's application for revision of sentence as a result of which the Applicant's custodial sentence is revised from five years imprisonment to three (3) years imprisonment. The sentence shall take effect from 16th June 2017 when the Applicant was convicted and sentenced by the trial court. It is so ordered.

DATED AT NAIROBI THIS 19TH DAY OF APRIL 2018

L. KIMARU

JUDGE