



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT EMBU**

**CRIMINAL REVISION NO. 4 OF 2018**

**VIRGINIA NYARUAI KIGWA.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. The applicant was charged and convicted of stealing contrary to Section 268 as read with Section 275 of the Penal Code and sentenced to twelve (12) months imprisonment. She has filed this application for revision through her advocates Bizimana & Co. Advocates.
2. The revision is brought under Section 362 of the Criminal Procedure Code seeking for review of the sentence imposed. She relies on the grounds that she is a university student and stands to be discontinued from her studies in the event that she continues to stay in prison until the sentence is fully served.
3. It is further stated that the trial magistrate acted harshly and irrationally in imposing custodial sentence with knowledge of the circumstances of the applicant.
4. The application was opposed by the respondent on grounds that the sentence of twelve months imprisonment was lenient and that the probation report was not suitable.
5. The applicant filed submissions in support of this application in which the sentencing policy of the judiciary and the principles applicable were cited.
6. The applicant was satisfied with the conviction but is desirous of having the sentence revised citing special circumstances that she is a student at Embu University. She states that she risks to be discontinued for any long stay in prison. She pleads that she be sentenced to a fine.
7. Section 362 of the Criminal Procedure Code provides:-

*The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.*

8. The offence of stealing contrary to Section 268(1) carries a sentence of three years imprisonment. The sentence of twelve months imprisonment imposed by the learned magistrate was lenient and the issue of a harsh or irrational sentence as alleged in this application does not arise.
9. The magistrate referred the applicant for a probation report. The probation officer said that the applicant was suitable for a community service sentence at Embu West Probation office. She was said to be a single mother of one child aged 2 years and still pursuing her university studies as a 3<sup>rd</sup> year.
10. The magistrate gave her reasons for rejecting the recommendation of the probation officer. The court also noted that the applicant was a first offender and of good conduct.
11. The court has a duty to consider the gravity of the offence, the record of the offender, special circumstances and responsibility of the offender. It was confirmed that the applicant is a student and has a young child.

12. Being a first offender, it would have been proper for the trial magistrate to exercise her discretion and give a non-custodial sentence.

13. This arrangement would give the young offender a chance to continue with her studies, look after child and become a responsible citizen of this country.

14. The application fits in the provisions of Section 362 of the Criminal Procedure Code. I hereby allow the application in exercise of the powers conferred to this court thereto.

15. The sentence of imprisonment is hereby set aside and replaced with a two year probation sentence.

16. It is hereby so ordered.

**DATED, DELIVERED AND SIGNED AT EMBU THIS 28TH DAY OF MAY, 2018.**

**F. MUCHEMI**

**JUDGE**

**In the presence of:-**

**Ms. Mate for Respondent**

**Mr. Singahachi for Bisma for Applicant**

**Applicant present**