



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT EMBU**

**CRIMINAL REVISION NO. 1 OF 2018**

**(Original Siakago Criminal Case No. 1044 of 2015)**

**JAMES KARIUKI NDWIGA.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. By an undated letter filed in court on 4/01/2018, the applicant seeks to invoke the powers of this court conferred under Section 362 of the Criminal Procedure Code. The applicant was charged and convicted by Siakago Senior Principal Magistrate of the offence of stealing stock contrary to Section 278 of the Penal Code. He was sentenced to serve five (5) years imprisonment on 5/04/2017.
2. The applicant states that he is satisfied with the conviction and only seeks to have the sentence reviewed downwards. He states that he is the sole bread winner of his family for he has a wife who is not employed and survives on doing casual labour. His application is that the sentence be reviewed downwards or he be given a chance on probation to complete the remainder of the sentence.
3. The respondent did not oppose the revision of the sentence.
4. The court called for a home inquiry report which describes the applicant as a person of good behaviour and with high Christian values which run across the board in the family. His brother is a pastor in Baptist church, in Embu town. He is the one who takes care of the wife and child and the applicant since he was arrested.
5. I have perused the entire proceedings in this case. The applicant in his defence says he was hired by a customer in his boda boda business to take him to Rwika who requested to be waited for and paid an extra Kshs.100/=. The customer was picking a bull with the help of some people in a pick-up. The applicant was arrested by an irate mob as he waited along the tarmac for his client to return after loading the bull in the vehicle. The bull that his customer was going to pick was stolen property.
6. The applicant gave a lengthy defence explaining how he was arrested and condemned as the thief of PW1's bull. The applicant says that his mitigation was not given due consideration. I have perused his mitigation. The magistrate after hearing the applicant concluded that he was not remorseful. This must be because the applicant proceeded to deny the offence saying he was not a thief.
7. The maximum sentence for stealing stock is for imprisonment not exceeding 14 years.
8. I have considered the circumstances in which the applicant was arrested, that is in his normal boda boda business as he served a customer he did not know before the incident. As much as the conviction is not faulted, I find that those circumstances ought to be considered during revision that there is a possibility of mistaken identity.
9. Due to the good previous character of the applicant as shown in the probation report, a non-custodial sentence has been recommended. He has served slightly over one (1) year in prison and I am of the considered opinion that he can serve the remaining sentence outside prison without disregarding the instructions given to him.
10. For these reasons, I allow the application for review of sentence by placing the applicant on probation for eighteen (18) months in substitution of the remaining three and half (3½) years of imprisonment.
11. It is hereby so ordered.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 24TH DAY OF JULY, 2018.**

**F. MUCHEMI**

**JUDGE**

**In the presence of:-**

**Mr. Ombongi for Respondent**

**Applicant present**