

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO. 280 OF 2015

GEORGE NILS AEMBE.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

Pursuant to **Section 362 of Criminal Procedure Code** the original record of proceedings in **Milimani Chief Magistrate's Court Criminal case No. 526 of 2013 - Republic vs George Nils Aembe** so that this court can satisfy itself as to the correctness, legality or propriety of the sentence and as to the regularity of the proceedings of the subordinate court. The Applicant was charged with stealing a motor vehicle contrary to Section 278(A) of the Penal Code. The particulars of the offence were that on 8th January, 2013 along Kimathi Lane in Nairobi within Nairobi County Jointly with others not before court stole a motor vehicle Reg. No. KBR 298W Toyota Probox valued at Kshs. 670,000/= the property of Benadeta Munyiva Kivaya. He was tried, found guilty and convicted accordingly. He was sentenced to serve 5 years imprisonment.

By a Chamber Summons dated 8th December, 2015, the Applicant prays for revision of the sentence to a non custodial one. He states that for the period he has been in prison, he had reformed and rehabilitated himself, he has learnt the value of hard work, honesty and patience and that he has promised to be a useful person after leaving the prison.

The court requested for a Probation Officer's Report which was filed by Jane Muturi a Probation Officer at Milimani Law Courts on 17th March, 2016. The same is dated 11th March, 2016. It shows that the Applicant exhibited remorse and regret for the offence he committed. He is expected to complete his sentence at the end of the year 2018 having been sentenced on 5th July, 2015. His family which was interviewed indicated that he engaged in crime due to bad influence and they were surprised by his conduct as they knew him as a good person. They indicated that they are willing to compensate the complainant if the complainant is amenable with such an arrangement. The probation officer thinks that the Applicant will adhere to the terms of a non-custodial sentence.

Under Section 278(A) of the Penal Code, a person found guilty of the offence of stealing a motor vehicle is liable to imprisonment for 7 years. The Applicant was a first offender aged 29 years. Although the law provides for a maximum of 7 years, being a first offender, I think the five (5) years imprisonment term was harsh in the circumstance. Whereas I would be inclined to reduce the same owing to the mitigating factors and the favourable Probation Officer's Report, by dint of the Applicant stating that his family is willing to compensate the complainant, I think the most prudent thing to do is to allow time for such negotiations. It is thus recommended that the Applicant through his family seeks the complainant and together can come to court with an amenable agreement on how the complainant will be compensated. Thereafter, the court may decide to revise the entire custodial sentence. For now, the application is declined pending such negotiations. The Applicant is at liberty to cause a mention in this file after an agreement between himself and the complainant is arrived at. It is so ordered.

DATED and DELIVERED this 21st day of MARCH, 2016

G.W. NGENYE-MACHARIA

JUDGE

In the presence of:

1. *The Applicant in person.*
2. *M/s Akuja for the Respondent.*