

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO.16 OF 2015

GEORGE MORARA BOSIRE.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant, George Morara Bosire was charged with six (6) counts of theft contrary to **Section 275** of the **Penal Code**. The particulars of the offence were that on 8th June 2012, the Applicant stole several laptops from six (6) complainants listed in the charge sheet. According to the facts narrated to the court, the Applicant duped the six complainants, who happened to be students, that he was in a position to secure them internship at KEMRI. He gave them a lift in his motor vehicle to the venue that the complainants would allegedly commence internship. At the venue, he told the complainants to leave their laptops in the motor vehicle as they went to the designated office. The Applicant abandoned the complainants in the building, returned to his car, and took off with the six laptops have to date not been recovered. When the Applicant was arraigned before the trial court, he pleaded guilty to all the charges. He fined Kshs.50,000/- on each count or in default he was to serve six months imprisonment. If he failed to pay the fine, the Applicant ordered to serve three (3) years imprisonment.

The Applicant has made several applications before this court seeking to have the sentence that was imposed on him to be reviewed. The applications, four in number, were consolidated by this court for the purpose of the hearing of the same. The applications raised more or less similar grounds. The Applicant pleads with the court to reduce the custodial term that was imposed on him. He told the court that he was remorseful and had learnt his lesson. He was led astray by the bad company he kept. While in prison, he was diagnosed as having HIV. This condition had negatively impacted on his life. He was also a diabetic and hypertensive. For these reasons, the Applicant pleaded with the court to sentence him to serve a non-custodial sentence to enable him take care of his health. While in prison the Applicant stated that he had become a born again Christian. He had changed his life for the better. He is now ready to be re-integrated back to the society.

Ms. Aluda for the State was opposed the application. She submitted that the Applicant duped innocent students as a result of which he stole from them their laptops. The laptops were not recovered. She was of the view that the sentence imposed on the Applicant was lenient taking into consideration the entire circumstance of the case. She urged the court to disallow the application.

When the trial magistrate sentenced the Appellant to serve the said period in prison, the court was exercising judicial discretion. This court cannot interfere with such exercise of judicial discretion unless it is established that the trial court either took into consideration wrong factors in determining the sentence or failed to take into consideration the correct factors when sentencing the Appellant. Where the sentence is manifestly excessive or exceedingly lenient, the Appellate court will interfere with the sentence. In the present application, it was clear to the court that the Applicant had not placed any material before this court to enable this court set aside or vary the sentence that was imposed on him by the trial court. Although the Applicant pleads that he is remorseful, the fact that the stolen items were not recovered militates against this court exercising its discretion in his favour. The sentence that was imposed of three years imprisonment was legal. This court is not persuaded that the Applicant has changed his character to the extent that this court can believe him when he says he is a changed person. His health condition is not

so serious such that he cannot be taken care of medically by the prison authorities.

His application therefore lacks merit and is hereby dismissed. It is so ordered.

DATED AT NAIROBI THIS 17TH DAY OF JUNE 2015

L. KIMARU

JUDGE