



**Lopayia v Republic (Miscellaneous Criminal Revision
E104 of 2024) [2025] KEHC 2314 (KLR) (5 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 2314 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
MISCELLANEOUS CRIMINAL REVISION E104 OF 2024**

RB NGETICH, J

MARCH 5, 2025

BETWEEN

KOKOYO LOTUDO LOPAYIA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant Kokoyo Lotudo Lopayia was charged with the offence of stealing stock contrary to section 278 of the *Penal Code*. The particulars of the charge were that the applicant on the 5th day of February,2024 at Rotu in Akoret division-Tiaty West Sub- County within Baringo County, stole one female camel valued at Kshs 70,000/= (seventy thousand Shillings), the property of Longoriareng Kotong.
2. In the alternative, the applicant was charged with the offence of handling stolen goods contrary to section 322(1)(2) of the *Penal Code*. The particulars of the charge were that the Applicant on the 10th day of February,2024 at Kamurio village in Tiaty West Sub- County within Baringo county, otherwise than in the course of stealing, dishonestly retained one female camel, knowing or having reasons to believe it to be a stolen animal.
3. The Applicant pleaded guilty to the charge and was convicted on his own plea of guilty. On the 23rd February,2024 the applicant was sentenced to serve 3 years imprisonment. He has now approached this court seeking to be allowed to complete the remaining sentence out of custody. He stated that he is remorseful, he is first offender, has reformed and rehabilitated thus seeks leniency from the court. He states that he has sought forgiveness from the complainant who has forgiven him since he did not incur any loss. He states that he is the bread winner of his family who needs his support. He said he is remaining with 14 months to serve.
4. The court directed that a social inquiry report to be filed.



Social Inquiry Report

5. From the report, the applicant did not attend school on ground that there were no schools near his home and he worked as a herder. He is married with 3 children. The applicant's uncle indicated that after the applicant's father passed on, the applicant and his siblings were not able to get a good life since the mother started taking alcohol and left the children at the mercy of well-wishers which may have contributed to the Applicant's criminality. He stated that the applicant's family members were under his custody and the mother is very ill. He added that the Applicant's wife relocated to her parent's home and he does not know how they are doing together with the children. He prayed for review of applicant's sentence to noncustodial so that he may assist him in taking care of the family and he is willing to facilitate reintegration of the applicant within the community.
6. The Applicant admits stealing the victim's camel which had mixed with his camels and stayed for long and he thought the owner had forgotten about it. He prays for forgiveness and a non-custodial sentence so that he can restart his life afresh and assist his uncle in taking care of his siblings and mother. The victim was not reached but social inquiry reveals the victim was compensated before the applicant was sentenced.
7. The local administration stated that the applicant has been troublesome for a long period of time and he is habitual livestock thief within the community and neighborhood and the community is happy with his incarceration as livestock theft has stopped. He is opposed to his release and propose that he finishes the training he is undertaking in prison as the skill acquired will help him while out.

Determination

8. The herein application invokes the revisional jurisdiction of this court which gives the court powers, in appropriate cases, to review and vary any orders, decision or sentence passed by the trial court if the court was satisfied that the impugned order, decision or sentence was illegal or was a product of an error or impropriety on the part of the trial court. If the court was so satisfied, the law mandated it to make appropriate orders to correct the impugned order, decision or sentence and align it with the law. The above is the import of Section 362 as read with Section 364 of the *Criminal Procedure Code*.
9. The applicant prays for review of remaining sentence to noncustodial sentence. The objectives of sentencing are outlined in the 2023 Judiciary of Kenya *Sentencing Policy Guidelines* at page 15, paragraph 4.1 as follows:-

Retribution: To punish the offender for his/her criminal conduct in a just manner.

Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.

Rehabilitation: To enable the offender reform from his criminal disposition and become a law-abiding person.

Restorative justice: To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims', communities' and offenders' needs and justice demands that these are met. Further, to promote a sense of responsibility through the offender's contribution towards meeting the victims' needs.

Community protection: To protect the community by incapacitating the offender.

Denunciation: To communicate the community's condemnation of the criminal conduct."



10. From the social inquiry report, the local administrator is opposed to non-custodial sentence on the ground that he was a known stock thief in the community and the community has been peaceful since incarceration of the applicant. He is of the view that the applicant completes the carpentry course he is doing while in prison so that it may help him when he completes sentence. In view of the sentiments given by the local administration, I am inclined to decline prayer to review applicant's sentence.

11. Final Order:-

Application review of sentence is hereby dismissed.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 5TH DAY OF MARCH 2025.

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RACHEL NGETICH

JUDGE

In the presence of:

Ms. Bartilol for State.

Applicant Present.

Elvis/Momanyi – Court Assistants.

