



**Riteluk v Republic (Miscellaneous Criminal Application
E103 of 2024) [2025] KEHC 3123 (KLR) (5 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3123 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
MISCELLANEOUS CRIMINAL APPLICATION E103 OF 2024**

RB NGETICH, J

MARCH 5, 2025

BETWEEN

CHEMATAI RITELUK APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant Chematai Riteluk 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 9th day of February, 2024, at Karuwen village in Chemolingot- Tiaty West sub-county within Baringo County, jointly with others not before court stole twenty five (25) goats and Ten (10) sheep valued at Kshs.210,000/= (two hundred and Ten thousand) the property of Kamarwa Simon.
2. The alternative charge is the offence of handling stolen goods contrary to section 322(1)(2) of the *Penal Code*. The particulars were that the Applicant on the 9th day of February,2024 at Napur village near Kapedo in Tiaty West Sub- County within Baringo County, otherwise than in the course of stealing, dishonestly retained 23 goats and 9 sheep, knowing or having reasons to believe them to be stolen.
3. The Applicant pleaded guilty to the charge and was convicted on his own plea of guilty. On 23rd February,2024, he was sentenced to serve 4 years imprisonment. The Applicant has now filed this application seeking non-custodial sentence for the remaining period of sentence. He states that he is remorseful, first offender, and prays for leniency from the court. He says he is remaining with 23 months to serve. The court directed that a social inquiry report to be filed.

Social Inquiry Report

4. From the report, the applicant did not attend any formal education and he has been working as a herder all his life. He is married with 5 children. The Applicant states that he is remorseful and he regrets



committing the offence. He states that he has reconciled with the victim and the stolen animals were returned to the victim. He prays for a non-custodial sentence and he is willing to perform community service. While in prison, he has not been attached to any industry but has been involved in cleaning and maintaining the general cleanliness of the prison.

5. The applicant's family indicated that they intended to reach out to the victim's family for reconciliation process and he prayed for the applicant to be sentenced to a non-custodial sentence. However, after giving them a period of about 2 months, the Applicant's family did not reach out to the victim. The victim indicated that the Applicant's family had initially shown interest in seeking forgiveness and doing compensation but eventually they went silent.
6. The local administration described the applicant as habitual stock thief who steals from one area and move into hiding in another area and once things cool down he steals again and moves. They state that this is not the first time the Applicant has been engaged in stock theft and therefore the local administration believes the Applicant should serve his sentence to completion so that he can learn a lesson. They added that the Applicant's behavior has gotten out of hand to the point that he would steal goats belonging to his own mother and sell in a different village forcing his mother to move away from his family home. Further, the Applicant is described as irresponsible as he does not provide for his wife and children.
7. On the 6th February, 2025 when the matter came up before court, the prosecution counsel Ms. Bartilol, submitted that the pre-sentence report is negative and submitted that the sentence imposed by the trial court was lenient sentence and there is need for deterrence sentence as the offence is prevalent in the area. She further submitted that there is no change of circumstances in this case to warrant review of sentence.

Determination

8. The application herein 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 mandates 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 herein was jailed for 4 years for the offence of stock theft. He seeks to serve the remaining 23 months while out of custody on ground that he is the sole breadwinner to his family. 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. I have perused and considered sentiments by people interviewed by the probation officer. The victim is strongly opposed to review of sentence on ground that the he was willing to meet with the Applicant's family but they did not take the matter seriously. The local administration also opposed review of sentence on ground that the applicant is a habitual thief fond of stealing from the locals and even his closest relatives and prayed for deterrence. In view of the above, I find the applicant not suitable for non-custodial sentence.

11. Final Orders: -

The application for review 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. Applicant for State.

* Applicant present.

* Elvis/Momanyi – Court Assistants.

Page 2 of 2

