Idomo v Republic (Criminal Revision E055 of 2024)
[2025] KEHC 5951 (KLR) (8 May 2025) (Ruling)

Neutral citation: [2025] KEHC 5951 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT KABARNET

CRIMINAL REVISION E055 OF 2024

RB NGETICH, J

MAY 8, 2025

BETWEEN

KANYAKERA KANG' IDOMO ..... APPLICANT

AND

REPUBLIC ..... RESPONDENT

RULING

1. The Applicant Kanyakera Kang'idomo was charged with the offence of Stealing stock contrary to section 278 of the *Penal Code*. The particulars of the charge were that the accused on the 9th day of January,2023 at Barpello village, Kolowa Location in Tiaty West Sub- County within Baringo County, stole two (2) cows valued at Eighty Thousand (Kshs 80,000/=) the property of joseph Nyoru Kangogo.

2. In the alternative, the applicant was charged with the offence of handling stolen goods contrary to section 322(1) of the *Penal Code*. The particulars of the charge are that the accused on the 9th day of January,2023 at Barpello village, Kolowa Location in Tiaty West Sub- County within Baringo County otherwise than in the course of stealing, dishonestly retained 2 cows valued at Eighty Thousand (Kshs 80,000/=) having reason to believe to be stolen.

3. The applicant denied the charge and the matter was set down for hearing. Upon the hearing and determination of the matter, the trial court found the applicant guilty of the offence of stealing stock and convicted him accordingly. On the 27th November,2023 the trial court sentenced the accused to 6 years imprisonment.

4. Dissatisfied and aggrieved by the decision of the trial court, the Applicant now seeks review of his 6-year imprisonment on the grounds that he is a first offender with no other criminal records. He seeks a lenient sentence under Article 50 (2)(p)(q) of the *Constitution* considering the exceptional circumstances of the case. He states that he is remorseful, repentant, rehabilitated and reformed and prays for leniency of the court.

5. The prosecution called for a social inquiry report before they could respond to the Application. The was filed on the 10th February,2025.

Social Inquiry Report

6. From the report, the Applicant had formal education up to standard 4 and after dropping out of school, he worked as a herder taking care of the family cattle until the time of his arrest. He is single and does not have any parental responsibility.

7. The Applicant was arrested after he met an irate mob on the way that was looking for the stolen cows. One person in the crowd stated he had seen the Applicant with the cows earlier in the morning. The mob arrested the Applicant and handed him over to the police and charged in court.

8. The Applicant still denies the offence indicating that he was arrested after being framed by members of the community. He says he does not know the victim and no form of reconciliation has taken place.

9. The victim on his part has moved to a different location and now resides in Maron sub-location, Ribkwo location. He indicated that he recovered his stolen livestock but neither the victim nor his family have approached him to seek forgiveness. He therefore leaves it to court to decide as to whether to revise the Applicant's sentence.

10. The local administration indicate that the Applicant was known to be a habitual thief before though he had not been arraigned in court but his cases were resolved through ADR at home. The local administration pray that the applicant completes his sentence in prison so that his sentence may deter others within the community.

11. The Applicant's family have not also committed themselves in the reintegration of the Applicant and probation officer is of the view that it will be difficult to supervise him on a non-custodial sentence and therefore find him not suitable for release at the moment but leave it to discretion of the court.

Response By State

12. On the 4th March,2025, when the matter came up for hearing in court, Ms. Bartilol submitted that the social inquiry report is negative and that the sentence imposed was lenient owing to the offence committed which attracts a sentence higher that 6 years imprisonment. She prayed that the application be dismissed on ground that the Applicant was charged with a serious offence and considering its prevalence in the region, she prayed that the Applicant completes his term in custody so that it deters others.

Analysis And Determination

13. This 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*.

14. 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."

15. From the social inquiry report, the applicant is a repeat offender though prior to his arrest in the instant case, the cases he was involved in were resolved through alternative dispute resolution mechanisms. The local administration is opposed to applicant's release to serve noncustodial sentence. The accused has not also expressed remorse nor made any attempts to reconcile or seek forgivingness from the victim. In view of the above, I do not find the applicant suitable for non-custodial sentence. From the foregoing, I hereby decline to revise sentence imposed by trial court.

16. Final Orders: -

Application for review of sentence is hereby dismissed.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 8TH DAY OF MAY 2025.

.....

RACHEL NGETICH

JUDGE

In the presence of:

CA Elvis/Momanyi.

Ms. Kosgei for state.

Applicant Present.