



**Njeri v Republic (Criminal Appeal 124 of 2023)
[2025] KEHC 6780 (KLR) (26 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6780 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CRIMINAL APPEAL 124 OF 2023**

**TW OUYA, J
MAY 26, 2025**

BETWEEN

STEPHEN MWANGI NJERI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Before this court is an application for review of sentence by the applicant acting in person. The application dated 15th April 2024 was brought under certificate of urgency and supported by affidavit of even date.
2. The applicant seeks for orders inter alia that he be admitted to bail/bond pending appeal, that that the time that he spent in custody pending trial be accounted for and that the court be pleased to grant him a conditional discharge through probation sentence and/or suspended sentence and/or Community Service order or any other relief that the court deems fit in the circumstances.
3. The Applicant cites that he was convicted on 16th November 2023 in MCCA No.E861 of 2023 by SRM, Murang'a to serve a jail term of six (6) years against which he has appealed and that the appeal has got high chances of success. That he is a bread winner and his family is likely to suffer irreparably if he is not admitted to bond. He avers that he resides within a fixed abord at Gathanji, Gaturi Location within Murang'a County and is willing to obey the terms that the court will put in place if bond is granted.
4. The applicant filed written submissions while Counsel for state made oral submissions. The applicant's submissions are premised upon two arguments namely; that he is entitled to a probation sentence, suspended sentence or to Community Service Order(CSO), and secondly, that he is entitled to benefit from the ongoing prison decongestion exercise by the judiciary. He hails the judiciary prison reform initiative which he states include effort to transform the correctional system into one of the highest



standards of justice and human dignity. He also points out that the judiciary initiatives focus on restorative just as opposed to imprisonment.

5. Counsel for the State/Respondent while opposing the application narrowed his arguments to the pre-sentence report whose import was that the applicant was unsuitable for a non-custodial sentence and secondly that the sentence meted against the applicant was excessive. Based on the above, Counsel argued that the pre-sentence report dated 15th November 2023 was not favorable to the applicant despite the fact that he was a first offender. To this end, he submitted that the prayer for a non-custodial sentence should not be available to the applicant.
6. However, Counsel pointed out that the applicant was charged with the offence of stealing contrary to section 268 as read with section 275 of the *Penal Code*. That he was sentenced to 6 years imprisonment upon his own plea of guilty. However, this was an erroneous sentence being that the sentence provided under section 275 of the *Penal Code* is 3 years imprisonment. Counsel submits that this was both excessive and erroneous.
7. Having considered the application together with submissions by both the applicant and counsel for the respondent, this court holds that the trial court gave the applicant the custodial sentence taking into account the pre-sentence report which was not favorable to the applicant. As such, this court will not interfere with that decision.
8. On another limb, the glaring observation by counsel for the state/respondent that the sentence was not only erroneous but also excessive must be addressed. The offence for which the applicant was convicted was stealing contrary to section 268 as read with section 275 of the *Penal Code* which provides that:

“275. General punishment for theft

Any person who steals anything capable of being stolen is guilty of the felony termed theft and is liable, unless owing to the circumstances of the theft or the nature of the thing stolen some other punishment is provided, to imprisonment for three years.”

9. Revisionary jurisdiction of the High Court was discussed by Odunga J in a persuasive decision of *Joseph Nduvi Mbuvi v Republic* (2019) eKLR where the court stated that:

“In my considered view, the object of the revisional jurisdiction of the High Court is to enable the high Court in appropriate cases, whether during the pendency of the proceedings in the subordinate court or at the conclusion of the proceedings to correct manifest irregularities or illegalities and give appropriate directions on the manner in which the trial, if still ongoing, should be proceeded with. In other words, the High Court’s revisionary jurisdiction includes ensuring that where the proceeding in the lower court has been legally derailed, necessary directions are given to bring the same back on track so that the trial proceeds towards its intended destination without hitches. Not only is the jurisdiction exercisable where the subordinate court has made a finding, sentence or order but goes on to state that it is also exercisable to determine the regularity of any proceedings of any such subordinate court as well.”

10. Similarly, Nyakundi J in *Prosecutor v Stephen Lesinko* [2018] eKLR outlined the principles which will guide a court when examining the issues pertaining to section 362 of the *Criminal Procedure Code* as follows:

“



- a. Where the decision is grossly erroneous;
- b. Where there is no compliance with the provisions of the law;
- c. Where the finding of fact affecting the decision is not based on evidence or it is result of misreading or non-reading of evidence on record;
- d. Where the material evidence on the parties is not considered; and
- e. Where the judicial discretion is exercised arbitrarily or perversely if the lower court ignores facts and tries the accused of lesser offence.

The above provisions convey jurisdiction to this court to exercise revisionary powers in respect of orders of the subordinate courts. This court is therefore possessed of the requisite jurisdiction to hear and determine this application.”

11. In the instant application, it is apparent from the record that the trial court passed a sentence of six (6) years imprisonment which was not only erroneous but also excessive. It is incumbent upon this court therefore, to review the said error by setting it aside and substituting it with what is appropriate as per the provisions of the law. From the foregoing, the appropriate sentence for the offence of theft for which the applicant was convicted is three years imprisonment in accordance with section 275 of the *penal code* which the penal section of that offence.
12. In reviewing the above, the court takes cognizance that the applicant has substantially served the impugned sentence from 16th November 2023 when it was passed. The court is however not persuaded to grant the applicant a non-custodial sentence considering that the pre-sentence report found him not favorable for such.
13. For the above reasons, the court hereby orders that the sentence of six (6) years imprisonment passed by the trial court in MCCR Case No. E851 of 2023 and delivered on 16th November 2023 is set aside and substituted with a sentence of three (3) years imprisonment. Prayer for non-custodial sentence is not allowed.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 26TH DAY OF MAY, 2025.

HON. T. W. OUYA

JUDGE

Accused Stephen Mwangi Njeri (In person)

Prosecution P. Mwangi

Court Assistant ... Doreen

