



**Aswa & another v Republic (Criminal Revision E479 of 2024)
[2025] KEHC 10204 (KLR) (15 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10204 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E479 OF 2024
RN NYAKUNDI, J
JULY 15, 2025**

BETWEEN

LUCAS OMUKUBA ASWA 1ST ACCUSED

SOSPETER OTIENO MABANGO 2ND ACCUSED

AND

REPUBLIC PROSECUTION

RULING

Representation:

M/s Sidi for the State

1. The Accused persons herein were charged with offence of stealing contrary to section 268 as read with section 275 of the penal code in Eldoret CM's Court Criminal Case No. E206 of 2022 where they were sentenced to pay a fine of Kshs. 100,000/= or serve two years' imprisonment. The Particulars of the offence were: Lucas Aswa and Sospeter Mabango: On diverse dates between 9th November 2021 and 25th January 2022 at JR mitumbas shop in Eldoret town in Turbo sub-county within Uasin Gishu county stole 46 bales of second hand clothes valued at kshs. 900,000/= the property of Collins Sydne Ingutia

Decision

2. A central of task of judges and magistrates is to weigh up the aggravating and mitigating factors of each case carefully in order to arrive at a fair penalty. For instance, lack of remorse is ubiquitously viewed in the legal literature as an aggravating factor requiring punishment and, therefore, a longer sentence. In contrast, mental disorder is commonly seen as mitigating factor necessitating treatment and leniency in sentencing. Interestingly, drug and alcohol addiction can be seen as either an aggravating or mitigating factor, depending on certain case specific issues. Once the aggravating and mitigating factors have been



weighed up, the judge then decides on the type of sentence to impose, such as imprisonment versus community based order.

3. In considering this application and all the circumstances I find no compelling and substantial circumstances to qualify for the sentence imposed to be reviewed by this court. In the case of *S v Ro and Another* 2000 (2) SACR 248 (SCA) it was held that:

“sentencing is about achieving the right balance or in more high-flown terms, proportionality. The elements at play are the crime, the offender, the interest of society with different nuance, prevention, retribution and deterrence. Invariably there are overlaps that render the process unscientific, even a proper exercise of the judicial function allows reasonable people to arrive at different conclusions.”

4. I have weighed the facts of this case and in terms of section 362 of the *CPC*, it fails the threshold test for this court to review the sentence imposed by the trial court. The application stands dismissed.

DATED AND SIGNED AND PUBLISHED VIA EMAIL AND CTS AT ELDORET THIS 15TH DAY OF JULY 2025.

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R. NYAKUNDI

JUDGE

