



REPUBLIC OF KENYA



KENYA LAW
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**Maina v Republic (Criminal Revision E282 of 2024)
[2025] KEHC 9473 (KLR) (3 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9473 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CRIMINAL REVISION E282 OF 2024**

TW OUYA, J

JULY 3, 2025

BETWEEN

PETER MWANGI MAINA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant, Peter Mwangi Maina, approached this court vide a Notice of Motion dated the 9th August 2024, seeking a revision of the sentence imposed by the trial court in Murang'a Chief Magistrate's Court by Hon. S. Mwangi in Criminal Case No. E019 of 2021.
2. The application is brought under section 362 of the Criminal Procedure Code on the basis that the trial court meted an excessive sentence and failed to find that the applicant was eligible for a non-custodial sentence. The application is also grounded on articles 47,48,159 and 165 of the Constitution.
3. In his supporting affidavit of even date the Applicant avers that he is an inmate at Murang'a Main Prison serving 5 years sentence for the offence of stealing contrary to section 268(10) as read with section 275 of the Penal Code. He urges the court to exercise its inherent powers to correspond his sentence to the law. In particular he prays to this court to review his sentence to a non-custodial sentence.
4. The applicant together with Simon Ndung'u Hoba were charged with the offence of stealing contrary to where it was alleged that on the 19th day of August 2023, at Mukuyu Trading Centre within Murang'a County, jointly with others not before the court stole one vibrations machine valued at kshs. 45,000 and one pokers machine valued at kshs. 80,000, the properties of Peter Warui Wambugu.
5. 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 being that on the 30th August 2023, at Mukuyu Trading Centre within Murang'a County, other than in the cause of stealing dishonestly retained one poker machine knowing or having reason to believe them to be stolen goods.



6. The matter proceeded for full trial with the prosecution adducing evidence by calling 2 witnesses. The accused were placed on their defence and each testified in their defence and called one witness each. Subsequently, the trial court convicted both accused and sentenced each one of them to 5 years imprisonment for the principal count.
7. The learned prosecution counsel Mr. P Mwangi in his brief oral submissions, submitted that the state is opposed to the application partially. On the one part, the state is opposed to the prayer for a non-custodial sentence being that the pre-sentence report to the trial court on 22nd February 2024 was not favourable to the accused as it stated that the accused was a repeat offender. It was on that basis that the court gave a custodial sentence.
8. On the issue of the sentence, counsel submitted that the five- year sentence was not only wrong in law but also excessive. Counsel humbly submitted that under section 275 of the [Penal Code](#), a person found guilty of stealing is liable for imprisonment for 3 years and for that reason the sentence of 5 years was illegal and excessive.
9. I have duly considered the application alongside the supporting grounds, affidavit, the lower court record and counsel's oral submissions. I have noted that the issue at hand is a revision of sentence to a non-custodial one and a reduction of the sentence on the basis of its legality.
10. The applicant and his co-accused were charged with the on offence of stealing under section 275 of the [Penal Code](#) which provides the general punishment for the crime of stealing. It states that anyone who steals something capable of being stolen is guilty of the felony termed theft and is liable to imprisonment for a term not exceeding three years. This is unless the specific circumstances of the theft or the nature of the item stolen warrant a different, and potentially harsher, penalty. It expressly provides:

“275. 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”
11. In the case of [Ian Ochieng Owaga v Republic](#) [2022] KEHC 2061 (KLR), the court stated:

“It is important to point out at the outset that as a general rule, sentencing is at the discretion of the trial court. This court in its supervisory jurisdiction whether sitting on appeal or in the exercise of its revisional jurisdiction can only interfere with the trial court's aforesaid discretion if it was satisfied that the sentence was patently illegal where it was not authorized by the law or that when passing sentence, the trial court acted on the wrong legal principles or took into account irrelevant factors or omitted to consider relevant ones or that the sentence was manifestly harsh or excessive.”
12. The principle that flows from the above precedent and statutory provisions is that the trial court is required to consider sentencing in line with the sentencing policy guidelines and the provisions of the law. In effect, while three years is the standard maximum for stealing, the actual sentence can be significantly higher depending on the specifics of the case including aggravating factors and special considerations.
13. This court has considered the entire application alongside the record and finds that the trial court went beyond the provided sentence of three years for an offence which is a misdemeanor without indicating any aggravating factors or reasons for awarding five years. This court finds that the sentence



was excessive and went beyond the dictates of the law. For the above reason the court finds that there is a basis for interference with the sentence of the lower court. The same is therefore set aside and substituted with a sentence of three years as per the provisions of the law.

14. On the issue of the non-custodial sentence, this court is minded to consider the pre-sentence report dated 22nd February 2024 which was availed at the trial court. The same was not favorable to the applicant as it recommended custodial sentence on the basis that the applicant was a repeat offender and had been convicted and sentenced in E 294 of 2022 and served at YCTC Kamiti Prison and in E202 of 2023 amongst others. The report further discloses that the applicant is not remorse and continues to deny the charge. The purpose of non-custodial sentence is to give the conviction an opportunity to reform and to integrate in the community. The report herein paints a grim picture about the applicant as a person who is not willing to reform despite his youthful age. For the above reasons this court will not interfere with the trial court finding on the custodial sentence.
15. This appeal succeeds partially. The sentence of five years imprisonment delivered on February 29, 2024 is hereby set aside and substituted with a sentence of three years imprisonment. The prayer for non-custodial sentence is dis allowed.

DATED, SIGNED AND DELIVERED PHYSICALLY AND ELECTRONICALLY THIS 3RD JULY, 2025.

HON. T. W. OUYA

JUDGE

For Appellant.....No Appearance

For Respondent.....Ms Manyal

Court Assistant.....Brian

