Nyarango v Republic (Miscellaneous Criminal Application E067 of 2024) [2025] KEHC 10386 (KLR) (3 July 2025) (Ruling)

Neutral citation: [2025] KEHC 10386 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NYAMIRA

MISCELLANEOUS CRIMINAL APPLICATION E067 OF 2024

WA OKWANY, J

JULY 3, 2025

BETWEEN

EZEKIEL GESIMBA NYARANGO ..... APPLICANT

AND

REPUBLIC ..... RESPONDENT

(Being Review on Sentence from the Decision in Keroka Cr. Case No. 688 of 2023 by Hon. M Munyekenye on 9.11.2023)

RULING

1. The applicant was convicted, on his own plea of guilty, for the offence of stealing contrary to Section 268 as read with Section 275 of the *Penal Code*. The particulars of the charge were that on 21st October 2023 at Ibanchore Sub-Location in Masaba South Sub-County within Kisii County stole two (2) hens and a school bag all valued at Kshs. 2,500/= the property of Hezron Tumbo Onsando. The Appellant was, upon conviction, sentenced to serve three years imprisonment without the option of a fine.

2. The applicant has now approached this court pursuant to Sections 357,362,364 and 382 of the *Criminal Procedure Code* seeking a sentence review on the basis that he is a young person who is remorseful for his actions and that he is entitled to be considered for a least severe sentence. He states that he is a first offender who has learnt his lesson the hard way.

3. When considering whether or not to impose a custodial or non-custodial sentence, the court is required to take into account the following factors:

    a. Gravity of the offence: - sentence of imprisonment should be avoided for misdemeanour.

    b. Criminal history of the offender. Taking into account the seriousness of the offences, first offenders should be considered for non-custodial sentence.

c. Character of the offender: - non-custodial sentence are best suited for offenders who are already remorseful and receptive to rehabilitative measures.

d. Protection of the community: - where the offender is likely to pose a threat to the community.

e. Offender's responsibility to third parties: - where there are people depending on the offender.

f. Children in conflict with the law: - non- custodial orders should be imposed as a matter of course in cases of children in conflict with law, except in circumstances where, in light of the seriousness of the offence coupled with other factors, the court is satisfied that a custodial order is the most appropriate.

4. This court is alive to the fact that sentencing is a matter that falls at the discretion of the trial court, which discretion, an appellate court should not interfere with except in instances where the sentence is manifestly excessive or illegal. The court also reminds itself that sentencing should always follow the provisions of the statute, the Sentencing policy guidelines published in 2023 and the Principles laid down in the various case law.

5. Article 25 (a) of the *Constitution* provides for the rights and fundamental freedoms from torture and cruel, inhuman, or degrading treatment or punishment. These fundamental rights should be borne in mind in sentencing an offender upon conviction for an offence. It is also a principle in sentencing that any verdict, sanction or punishment must be proportionate to the crime for which the accused person has been convicted.

6. In the instant case, it is also clear that the accused person was a first offender and entered a plea of guilty which are issues that the trial court ought to have considered during sentencing. My take is that in the circumstances of this case, it is very unlikely that the Appellant would have reoffended if he was given a non-custodial sentence.

7. My view is that, in the circumstances of this case, Applicant deserved to be given a non-custodial sentence considering the nature/gravity of the offence and the fact that he pleaded guilty thereby saving the court's precious judicial time that would have been spent on a full trial. From the foregoing, I find that the period that the Applicant has spent in prison is sufficient punishment for the offence that he committed.

8. Consequently, I allow the review application and substitute the 3 years sentence imposed by the trial court with the period that the Applicant has already spent in prison. I therefore direct that he be set at liberty forthwith unless he is otherwise lawfully held.

9. It is so ordered.

RULING DATED, SIGNED AND DELIVERED AT NYAMIRA VIRTUALLY VIA MICROSOFT TEAMS THIS 3RD DAY OF JULY 2025.

W. A. OKWANY

JUDGE