



**Benson Kenyakera v Republic (Criminal Miscellaneous Application  
E057 of 2023) [2024] KEHC 2365 (KLR) (6 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2365 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KABARNET  
CRIMINAL MISCELLANEOUS APPLICATION E057 OF 2023**

**RB NGETICH, J**

**MARCH 6, 2024**

**BETWEEN**

**BENSON KENYAKERA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant was charged in count one 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 8<sup>th</sup> day of October, 2023 at Churo Tiaty East Sub- County within Baringo county stole 2 goats all valued at Kshs.10,000/= the property of Samson Kasirti Yaraa.
2. Count II is the offence of escaping from lawful custody contrary to section 123 of the penal code. The particulars were that the accused on the 10<sup>th</sup> day of October, 2023 at 1730 Hrs in Tiaty East Sub- County within Baringo County being in lawful custody of PC Rioba at Churo police post escaped from the said custody.
3. The accused pleaded guilty to the charges and was convicted on his own plea of guilty. On 13<sup>th</sup> day of December, 2023 the applicant was sentenced to 4 years imprisonment in Count 1 and 1 year imprisonment in count 2; the two sentences to run concurrently.
4. The applicant now seeks review on ground that the complainant who is his father wishes to withdraw this case. He states that he is remorseful and pray that sentence be reduced or be substituted with a non-custodial sentence so that he can help his father.
5. The state counsel Ms. Ratemo submitted that applicant has only served 3 months remaining to serve and in view of the fact the he escaped from lawful custody, he is not suitable for sentence review; and further from the report, he is a habitual offender.



**Determination**

6. I have considered the nature of the offence. From social inquiry report, the applicant is an habitual offender and as submitted by the state counsel, he has served only 3 months in prison. The report also indicate that he has strain relationship with his family due to his conduct of being on the bad side of the law. Among objectives of sentence is rehabilitation and retribution which in my view has not been achieved within the short period the applicant has served in prison. In view of the negative report against the applicant and the fact that he has served only 3 months in prison, I am inclined to decline review of sentence herein.

**Final Orders: -**

I decline to review sentence imposed against the applicant.

**RULING DELIVERED, DATED AND SIGNED IN OPEN COURT AT KABARNET THIS 6<sup>TH</sup> DAY OF MARCH 2024.**

.....

**RACHEL NGETICH**

**JUDGE**

In the presence of:

Applicant present.

Kibet, Court Assistant.

Ms Rateмо for State.

