



**Kemboi alias Mohammed v Republic (Criminal Revision  
E082 of 2023) [2024] KEHC 2398 (KLR) (5 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2398 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KABARNET  
CRIMINAL REVISION E082 OF 2023  
RB NGETICH, J  
MARCH 5, 2024**

**BETWEEN**

**EMMANUEL KEMBOI ALIAS MOHAMMED ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant herein was charged with the offence of stealing by servant contrary to section 281 of the *penal code*. The particulars were that the accused on the 21<sup>st</sup> day of February, 2022 at around 1900Hrs in Marigat Township, Marigat Location Baringo South Sub- County within Baringo County, being a servant of Abdinassir Mohammed Aden, stole Kshs. 31,240/= the property of Abdinassir Mohammed Aden which came into possession by virtue of his employment.
2. The accused pleaded guilty to the charges and he was convicted on his own plea of guilty. The Prosecution informed the court that the accused had previous criminal records where he was on one year probation in criminal case No. 597 of 2021. That he was also charged in criminal case No. 587 of 2021 where the matter was withdrawn under Section 87(a) of the *CPC*.
3. The accused in his mitigation sought to be pardoned stating that he was called from home and informed that his mother was sick and that he went for collection and used the money.
4. On 7.11.2022 the trial court upon considering the pre-sentence report and noting the recommendations therein found that the applicant was not suitable to serve a non-custodial sentence as his home environment was not conducive for rehabilitation. The trial court proceeded to sentence the accused to serve five (5) years imprisonment.
5. Dissatisfied with the sentence of the trial court, the applicant has approached this court seeking review of sentence on ground that the trial court arrived at manifestly excessive sentence of 5 years considering he was a first offender thus contravening the provisions of Article 50(2)(p)(q) of the *Constitution of*



Kenya, 2010. He stated that he is 23 years old and has a bright future if the custodial sentence order is stayed. He urged this court to exercise discretion and review the 5 years sentence downwards or substitute the custodial sentence with a non-custodial term for the interest of justice. He says he has fully reformed, rehabilitated and ready for social reintegration after successfully graduating with certificate in auto-motor vehicle maintenance being offered in prison. He has been in prison for 1 year 2 months.

6. A social inquiry report shows that the applicant's family has no history of criminality save for the applicant. The report indicates that the applicant dropped out of school due to family differences and his own personal will. He started working as a boda boda rider up to 2017 when he went to Nairobi to work at Bamburi cement as a trailer truck turn boy. In 2020, he went to Mogotio to work for his uncle as a turn boy. In 2021, January, he went to work at a yellow bar in Marigat as a security bouncer. In 2022 he worked as a shop attendant Marigat Coca Cola depot.
7. The inmate admits the offence of stealing by servant. From the report, his father said he has been troublesome for a long time and being in custody is a relief to them. The report indicates that the family say he can be released to serve a non-custodial sentence for the remaining period but did not commit to supporting his reform. The victim indicated that he has forgiven the applicant and is not opposed to him serving a non-custodial sentence.
8. The local administration indicates that the applicant has mastered the art of stealing and the community at large is still hostile towards the applicant. The report indicates that the applicant had a previous conviction vide E595/2021 where he was sentenced to serve a one-year probation sentence and he completed the sentence satisfactorily.

#### **Determination**

9. I have considered the applicant's prayer to be allowed to serve under probation for the remaining sentence. I also take note of the fact that he has served under probation before. Even though he completed satisfactorily, it seems the non-custodial sentence did not help to reform him because he went back into crime again. I also take note of the fact that even though the applicant's family are not opposed to him being released on a non-custodial sentence, they are not ready/willing to re-integrate him back owing to his behavior.
10. I note that out of the 5 years sentence imposed, the applicant has served 25 months remaining. In view of the sentiments above, I decline to revise the applicant's sentence.

#### **Final Orders: -**

11. ....
  1. Application for review is hereby declined.
  2. Applicant may renew his application or the court may consider on its own motion at a later date.

**RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 5<sup>TH</sup> DAY OF MARCH 2024.**

**RACHEL NGETICH**

**JUDGE**

In the presence of:-



Applicant present.

Ms Ratemo for State.

E. Kibet – Court Assistant.

