



**Meshack v Republic (Criminal Miscellaneous Application
E056 of 2023) [2024] KEHC 2411 (KLR) (5 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2411 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL MISCELLANEOUS APPLICATION E056 OF 2023**

RB NGETICH, J

MARCH 5, 2024

BETWEEN

DENNIS KIPLAGAT MESHACK APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant was charged with the offence of stealing contrary to section 268 as read with section 275 of the Penal Code. The particulars were that on the 30th day of May, 2022 at around 1700Hrs at Lobo junction, Marigat Location in Baringo South Sub- County within Baringo County, the accused jointly with another already before court stole 1 Mobile Phone Make ITEL valued at Kshs. 1,200/= and unlawfully gained access to M-pesa account number 0741820368 and transferred cash amounting to Kshs. 57,000/= to M-pesa Account Number 0113919795 registered in the names of Eunice Megiri, the property of Joshua Lelebo.
2. The accused pleaded guilty to the charge and was convicted on his own plea of guilty. The Prosecution informed the court that the accused is a first offender and the accused mitigated and, on the 16th November, 2022, the accused was sentenced to serve three (3) years imprisonment.
3. The applicant now prays for a non-custodial sentence for the remaining period of sentence on ground that he has a young family, he is the sole bread winner and if granted the opportunity, he will assist them together with his mother who is a widow.
4. A social inquiry report filed in court reveal that the applicant had formal education up to form 1 at Eldume day secondary school where he dropped out school in 2017 due lack of school fees. He engaged in farming and casual labor before taking a loan in 2019 to buy a motorcycle and has been operating boda boda business up to the time of his arrest. He is married with one child aged 2 years. From the report, his criminality is as a result of greed. While in prison the inmate has undertaken a course in



carpentry grade 3. He is yet to sit for the grade 3 test but the prison authorities indicated that if released, he can still sit for the test when the time comes.

5. The local administration stated that the applicant has history of being a nuisance within the community as a result of parental negligence on part of his father who passed on last year but are of the view that if he has rehabilitated, then he can be given a chance to complete his sentence within the community.
6. The report indicate that the applicant is due for lease on 16th of November 2024 sentence remaining being about 9 months and 10 days and that he is attached to the carpentry section. He indicates that he has learnt his lesson and upon his release, he will keep off negative influence and continue to work as a boda boda rider and rely on it to earn a decent living without greed. He says he is willing to compensate the complainant with land to till.
7. The applicant's father said he has been taking care of Applicant's family but due to economic hardship, it's becoming difficult for him. The applicant's wife is ready to welcome the applicant home and assist in his reintegration back to the community.
8. From the report, the victim is of the view that the applicant is not remorseful and is opposed to the applicant being released to complete sentence at home. On the applicant's proposal to allow the victim till land until he gets the money he lost, but the victim said he is not a farmer and prefer monetary compensation.

Determination

9. I have considered sentiments of the local administration. Despite the fact that the applicant has been troublesome in the community, they are not opposed to him serving the remaining period of sentence while in the community if he has reformed. The victim's interest is compensation. From the report, the applicant has intentions of going back to motor cycle business to earn a living. He has also learnt carpentry upto grade though he has not done examinations for grade 3 but prison administration have indicated that he can still do the examination/test while out of prison. Of the 3 years jail term, the applicant is remaining with 9 months 10 days to serve.
10. From the report, the applicant took imprisonment positively and has learnt additional skill of carpentry which I believe if released will assist him maintain his family and also compensate the complainant. In view of the above, I am of the view that the applicant's family, the community and complainant stand to benefit if applicant is allowed to serve the remaining sentence while in the community. I therefore find this case suitable for revision.

Final Orders: -

11. Applicant to serve probation sentence for the remaining term of sentence.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 5TH DAY OF MARCH 2024.

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RACHEL NGETICH

JUDGE

In the presence of:

Applicant present.



Ms Ratemo for State.

Elvis – Court Assistant.

