



REPUBLIC OF KENYA



**Kirwa v Republic (Criminal Appeal E124 of 2022)  
[2024] KEHC 3456 (KLR) (9 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 3456 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL APPEAL E124 OF 2022  
RN NYAKUNDI, J  
APRIL 9, 2024**

**BETWEEN**

**AMOS KIRWA ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an Appeal from the Judgment of Hon. R.  
Odenyo in Eldoret Law courts Cr. No. 1411 of 2022)*

**JUDGMENT**

1. The Appellant was charged with two counts of stealing contrary to Section 278(a) of the [Penal Code](#) and Fraudulent disposal of trust property contrary to section 327 of the [penal code](#) The particulars of the offence on the first count were as follows:

On the 26<sup>th</sup> day of July, 2022 at Baharini area, in Turbo Sub count, within Uasin Gishu County, jointly with others not before court, the appellant stole on motorcycle registration No. KMGF 656J, boxer BM-150 white in color chassis No; MD2A21BX9NWA88479, valued at Kshs. 317,803 the property of Watu Credit.

2. On the second count, the particulars of the offence were that on 26<sup>th</sup> July, 2022 at Krugar farm, in Moiben Sub-County, within Uasin Gishu County, being a trustee to motorcycle registration No. KMGF 656J, boxer BM-150 white in color chassis No; MD2A21BX9NWA88479, the property of Watu Credit, the appellant with an intent to defraud, unlawfully destroyed the motorcycle tracker and converted the said motorcycle to his own used not authorized by the trust.
3. On the third count, the particulars of the offence were that on the 5<sup>th</sup> day of July, 2022 at Baharini area, in Turbo Sub-County, within Uasin Gishu County, jointly with others not before court, the appellant stole one motorcycle registration number KMG A 180L, TVS red in color, chassis No; MD625NF55M1H27625, valued at Kshs. 257,712 the property of Watu Credit Limited.



4. The Appellant was convicted on his own plea and sentenced to serve 4 years imprisonment on the first count and 4 years on the third count. On the second count he was discharged under section 35(1) of the penal code. The trial court ordered that the sentence for the first and third counts to run consecutively.
5. The appellant's appeal challenges the sentence on grounds that the sentence imposed should run concurrently as per section 14 of the CPC. He further seeks a probation based sentence and has cited section 4(1) and (2) of the Probation of Offenders Act Cap 64 Laws of Kenya.
6. The guiding principle on issues of sentencing is that it is a matter at the discretion of the trial court. An appellate court will normally not interfere with the lower courts exercise of discretion unless it is apparent that the trial court relied on a wrong principle of the law or has overlooked material factors, or where the court finds that the sentence is manifestly harsh and excessive. See *Ogolla s/o Owuor v. Republic* (1954) EACA 270, and *Wanjema v. Republic* [1971] E.A 494)
7. The Appellant was charged with three counts of offences. In circumstances where a person commits more than one offence at the same time in one transaction, the practice is and has been that a concurrent sentence is prescribed for such offences.
8. The appellant made reference to the provisions of section 14 of the Criminal Procedure Code, which provides as follows:

“Subject to subsection (3), when a person is convicted at one trial of two or more distinct offences, the court may sentence him, for those offences, to the several punishments prescribed therefor which the court is competent to impose; and those punishments when consisting of imprisonment shall commence the one after the expiration of the other in the order the court may direct, unless the court directs that the punishments shall run concurrently.”
9. Essentially, it is at the discretion to direct how the sentences should run as set out in the foregoing provision. In the present case, the sentences on the two counts were ordered to run consecutively. The appellant is required to serve 8 years for the said offences.
10. Section 278A of the Penal Code prescribes an imprisonment term of Seven years for the offence of stealing a motor vehicle. In the present circumstances, with the trial court's directions it means the appellant will serve more than three quarters the maximum sentence provided under the law i.e. 7 years.
11. In my considered view, the sentence was slightly excessive, particularly given that there were no aggravating factors. The appellant having given mitigation, I believe he ought to serve a lesser sentence.
12. In the upshot, I will allow the appeal by setting aside the sentence imposed and substitute it with two and half years in each count. The sentences shall run concurrently starting from the date of conviction i.e. 20.12.2022.

**DATED AND SIGNED AT ELDORET THIS 9<sup>TH</sup> DAY OF APRIL, 2024**

.....

**R. NYAKUNDI**

**JUDGE**

