



REPUBLIC OF KENYA



**Lokilekweng v Republic (Criminal Revision E005 of 2024)
[2024] KEHC 3458 (KLR) (11 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3458 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL REVISION E005 OF 2024
RB NGETICH, J
APRIL 11, 2024**

BETWEEN

APURA AKAPEL LOKILEKWENG APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant was charged 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 23rd day of April, 2022 at Nangarwa village Kaptuya Location in Tiaty East Sub- County within Baringo County stole 6 sheep and 6 goats all valued at Kshs.36,000/= the property of Jackson Kapoi Marambu.
2. The accused faced an alternative count of handling stolen goods contrary to section 322(1)(2) of the [Penal Code](#). The particulars of the charge were that the accused on the 23rd day of April at Nangarwa village Kaptuya location in Tiaty East Sub- County within Baringo county otherwise that in the course of stealing dishonestly retained 6 sheep and 6 goats all valued at Kshs.36,000/= knowingly or having reason to believe to be stolen goods.
3. The accused pleaded not guilty to the charges and the matter was set down for trial. The prosecution availed 3 witnesses in support of the allegations against the Appellant. Upon the close of the prosecution's case, the court established that a *prima facie* case had been established against the accused and proceeded to place him on his defence. Upon hearing both the prosecution and the defence case, the court found the accused guilty of the offence of stealing stock and convicted him accordingly. On the 15th day of May, 2023 the trial court sentenced the applicant to serve 5 years imprisonment with effect from 28th April, 2022.
4. Dissatisfied with the sentence of the trial court, the applicant has approached this court seeking review of sentence on ground that the sentence was too harsh and he has reformed; that he is remorseful and



he is the sole breadwinner in his family. He prayed to be allowed to serve the remaining sentence on a non-custodial sentence.

5. In response, the prosecution counsel Ms. Ratemo prayed that a social inquiry be done. The court directed that social inquiry report be filed and it was filed on 5th March, 2024. From the report, the applicant is aged 20 years. He comes from a polygamous family and he never attended school. He is married and blessed with two children aged three years and one year. Prior to his arrest, he was involved in the business of selling goats in the markets of Chepkalacha, Tangulbei and Makutano.
6. From the report, the victim's goats had been taken to the field to graze when the applicant stole and upon search by community members, the applicant was found in the market trying to sell the goats. The victim who is a doctor by profession stated that the theft of his goats affected him economically. He is opposed to the applicant being given a non-custodial sentence on ground that that he escaped from custody before he was sentenced and may be troublesome during supervision.
7. The local administration and the village elder both indicated that the inmate is one of the troublesome youths within the community. They are opposed to the applicant being given community rehabilitation indicating that his supervision will be a challenge since his character is very unpredictable. They prefer him completing his sentence while in custody. The probation officer's view is that due to negative feedback concerning the applicant, he is not suitable for non-custodial sentence.

Determination

8. The application herein invokes the revisional jurisdiction of this court which gives the court powers, in appropriate cases, to review and vary any orders, decision or sentence passed by the trial court if the court was satisfied that the impugned order, decision or sentence was illegal or was a product of an error or impropriety on the part of the trial court. Section 362 as read with section 364 of section [criminal procedure code](#) empowers this court to make appropriate orders to correct the impugned order, decision or sentence and align it with the law.
9. From the social enquiry report, the applicant has indicated that he is remorseful, has reformed and has a family to take care of and prayed for non-custodial sentence for the remainder of his term.
10. I take note of the fact that the local administration, the community and the victim are all opposed to the applicant being granted a non-custodial sentence on ground that the applicant is one of the troublesome youths within the community; they are all of the view that the applicant should complete his sentence in custody. The applicant has served 3 months of the 3 years jail term.
11. The intention of sentence among others is rehabilitation and deterrence. In my view, 3 months in custody is not sufficient period to rehabilitate the applicant. Further, record show that he once escaped from lawful custody which is an indication that it is unlikely that he will abide by conditions of non-custodial sentence. From the foregoing, I decline to revise the applicant's sentence.

Final Orders: -

1. I hereby decline to revise the applicant's sentence.
2. The applicant may renew his application at a later date.

RULING DELIVERED, DATED AND SIGNED IN VIRTUALLY AT KABARNET THIS 11TH DAY OF APRIL 2024.

RACHEL NGETICH
JUDGE



In the presence of -
CA Sitienei/Momanyi.
Ms. Ratemo for state.
Applicant present.

