



**Mururi v Republic (Miscellaneous Criminal Application  
E002 of 2023) [2024] KEHC 3773 (KLR) (18 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3773 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KABARNET  
MISCELLANEOUS CRIMINAL APPLICATION E002 OF 2023**

**RB NGETICH, J**

**APRIL 18, 2024**

**BETWEEN**

**PATRICK MWANGI MURURI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant together with 3 others were jointly charged with 3 counts of offences. count I for the offence of stealing contrary to section 268 as read with section 275 of the *Penal Code*. The particulars of the offence states that the accused on the 28<sup>th</sup> day of June, 2018 at Koitebes area of Mogotio Sub-County within Baringo County jointly with others not before court, stole three (30) blocks of copper windings from transformer of Sub-station No. 143673-50KVA 33KV valued at Kshs. 260,000/= the property of Kenya Power and lighting Company Limited.
2. In count II the accused jointly with three others were charged with the offence of vandalism of electrical apparatus contrary to section 64(4) of the *Energy Act* No. 12 of 2012. The particulars were that on the 28<sup>th</sup> day of June, 2018 at Koitebes area of Mogotio Sub- County within Baringo County jointly with others not before the court, the accused persons willfully vandalized one (1) transformer of sub-station No. 143673-50 KVA-33 KVA valued at Kshs. 1,500,000/= the property of Kenya Power and Lighting Company Limited.
3. Under Count III the accused herein faced the charge of personation contrary to section 382 as read with section 36 of the *Penal Code*. The particulars were that the accused on the 28<sup>th</sup> day of June, 2018 at Mogotio police in Mogotio Sub- County within Baringo County, falsely represented himself to be Stephen Mwangi Nduati of National Identity card Number 13622811 during interrogation for the offence of stealing and vandalism of electric apparatus by number 47795 P.C Charles Kipkoech and No. 54133 Cpl Murimi who are the investigating officers.



4. Upon conclusion of trial, the applicant was found guilty under counts I and II, convicted and on the 23<sup>rd</sup> March, 2022 the applicant was sentenced as follows:-
  - i. Count I fine of Kshs.100,000/= in default one (1) year imprisonment.
  - ii. Count II fine of Kshs. 5,000,000/= in default 10 years imprisonment.
5. Dissatisfied with the sentence of the trial court, the convict has approached this court seeking for sentence review. The applicant seeks *vide* undated notice of motion application filed in court on the 21<sup>st</sup> September,2023 the following orders:-
  - a. That the Honourable court be pleased to substitute the applicant's sentence of imprisonment that he is now serving with a probation sentence.
  - b. That the Honourable court be pleased to invoke the provisions of Section 362,363 and 364(b) of the Criminal Procedure Code and provisions under the probation of offenders Act and review the balance of his sentence to a non-custodial sentence.
  - c. That this Honourable court has jurisdiction to determine this petition under the provisions of Article 165(3) (9) of the New Constitution of Kenya,2010 and the relevant provisions under the probation of offenders Act respectively.
6. The application is premised on the grounds that the applicant's health status deteriorates day by day since he was diagnosed and found to be suffering from low diabetes (class 1) and he has a kidney problem which requires frequent medical attention. The applicant states that he is utterly remorseful and repentant of what happened and if given another chance, he will not repeat such an act again.
7. The applicant states in his application that after the conviction, he filed appeal No. E014 of 2022 which after hearing by this court, it was dismissed in its entirety on 29<sup>th</sup> June, 2023.This court however ordered that the accused spent in custody period be computed in sentence imposed by the trial court.
8. The applicant stated that he has been in custody and is now a reformed person, completely remorseful and ready to adhere with the laws of the land.
9. When the matter came up for hearing on the 23<sup>rd</sup> of February 2024, the applicant informed the court that he has now served 6 years and he is remaining with one year to complete his sentence. And prayed that he be allowed to serve the remaining period under probation so that he can take care of his family.
10. In response, Mr. Kingori for the state informed the court that they had not been served with the application. The court directed that the DPP be served with the application and called for social inquiry report to be prepared by the Probation Officer.
11. On 15<sup>th</sup> April when the matter came up, the applicant said he is now remaining with 10 months to complete sentence. He said he has learnt carpentry and plumbing while in prison and he has also been given recommendation letter and prayed for substitution of the remaining sentence with non-custodial sentence.
12. In response, Ms. Ratemo for the state submitted that the applicant was charged together with three other and they all filed separate appeals which were consolidated and this court heard and determined the consolidated appeals by dismissing in its entirety. She submitted that there are no circumstances which have come up to warrant this court review sentence which it had upheld on appeal.



## Determination

13. 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. If the court is so satisfied, the law mandated it to make appropriate orders to correct the impugned order, decision or sentence and align it with the law. The above is the import of Section 362 as read with Section 364 of the *Criminal Procedure Code*.
14. I note from social enquiry report that the applicant admits the charge, he regrets committing the offence and blames irrational decision. His father attributes the applicant's action to bad company. Prison authorities indicate that the applicant has been of good conduct while in prison.
15. The local administration indicate that the applicant was in company of idlers who were stealing in the area. He is opposed to accused being released to serve remaining period while out of prison.
16. It is not disputed that the applicant filed appeal before this court against conviction and sentence which was dismissed in its entirety while the period served in remand was taken into consideration in computation of sentence. The question that follow is whether this court can revise sentence after dismissing appeal on sentence. The Supreme Court considered the issue of review of judgements and orders in *Fredrick Otieno Outa v Jared Odoyo Okello & 3 others* [2017] eKLR and held that:

“...we hold that as a general rule, the Supreme Court has no jurisdiction to sit on appeal over its own decisions, nor to review its decisions, other than in the manner already stated in paragraph (90) above. However, in exercise of its inherent powers, this Court may, upon application by a party, or on its own motion, review, any of its Judgments, Rulings or Orders, in exceptional circumstances, so as to meet the ends of justice. Such circumstances shall be limited to situations where:

  - a. the Judgment, Ruling, or Order, is obtained, by fraud or deceit;
  - b. the Judgment, Ruling, or Order, is a nullity, such as, when the Court itself was not competent;
  - c. the Court was misled into giving Judgment, Ruling or Order, under a mistaken belief that the parties had consented thereto;
  - d. the Judgment or Ruling, was rendered, on the basis of a repealed law, or as a result of, a deliberately concealed statutory provision.”
17. In view of the above, I find that the applicant has failed to demonstrate any of the above conditions to warrant review of his sentence. No exceptional circumstance has been brought to the attention of this court. In view of the above and the fact that negative report has been given by the local administration, I decline to revise the applicant's sentence.
- 18.

### Final Orders: -

Application for revision of sentence is hereby dismissed.

**RULING DELIVERED, DATED AND SIGNED IN VIRTUALLY AT KABARNET. THIS 18<sup>TH</sup> DAY OF APRIL 2024.**



*Handwritten signature*

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**RACHEL NGETICH**

**JUDGE**

**In the presence of:**

CA Karanja.

Ms. Ratemo for state.

Applicant present.

