



**Mungai v Republic (Criminal Revision E076 of 2024)
[2024] KEHC 3427 (KLR) (11 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3427 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E076 OF 2024
RN NYAKUNDI, J
APRIL 11, 2024**

BETWEEN

VICTOR MUNGAI APPLICANT

AND

REPUBLIC RESPONDENT

*(Being an application for revision of sentence in criminal case no.
E1678 of 2023 before hon. Peter N. Areri (SPM) dated 9th august 2023)*

RULING

1. The applicant was charged, tried, convicted and sentenced to 2 years imprisonment for the offence of stealing contrary to section 275 of the Penal Code.
2. The applicant has approached this court pursuant to sections 357, 362, 364& 382 of the Criminal Procedure Code as construed with Article 50(2)(p)&(q) as conjunctively read with Article 50(6)(a)&(b) of the Constitution and further taking into account the Probation Officer's report dated the 20th day of March 2024, the sentence so imposed by the learned trial Magistrate be and is hereby reviewed to a period of 8 months to be served on community service at Kapyetmet chief's office.
3. Given the facts of this case, victim-offender mediation could have been navigated by the learned trial Magistrate to take into account the best interest of the victim, the offender and the community. In my view, the present criminal justice system is unsatisfactory to many respects; first it leaves the accused and the complainant and even members of the society dissatisfied with the outcome of the criminal cases disposed off by trial court. Why do I say so? The pre-dominant doctrine guiding exercise of discretion is the deterrent principle in sentencing.
4. The Court therefore ignores the other contributory factors in sentencing policy on reparation, reformation, rehabilitation and the effective use of parity and proportionate canons which are so fundamental in our criminal justice system. It also focuses on the State than the harm against the



individual or personal rights before it. I consider crime as a violation against individual rights and the State is a vehicle under Article 157 (6),(7),(9),(10) &(11) of the *Constitution* to guarantee and protect those rights by prosecuting the wrong doers as provided for in our penal system for the interest of justice. There is need for trial courts to focus on rehabilitation and re-integration of offenders into the community where such factors are responsive. This is one case where the justification for victim-offender mediation could have played a major role in having the applicant to serve a non-custodial sentence than the last resort option of a custodial sentence.

5. I bear in mind, in reviewing this sentence, that the trial court gave more weight to the objective of deterrence which was to inflict punishment upon the applicant to deter him from re-offending. Interestingly, from the reading of the record, no such evidence was presented to the learned trial Magistrate. Let us take for a moment the purpose of reformative and rehabilitation of an offender which principles clearly are part of the sentencing scheme in Kenya to facilitate an offender like the applicant in this case to be given an opportunity to re-adjust within the confines of society. If indeed, victim-offender mediation could have been invoked by the learned trial Magistrate, the values of forgiveness which flow from doctrinal philosophy of Christianity as of necessity serves the interest of justice for both the offender and the victim. In sum, I am persuaded to review the sentence as earlier on stated to have the applicant serve the balance of the period by offering services to the community which the law requires that he be supervised to perform public works for the benefit of society. It is so ordered.

SIGNED, DATE AND DELIVERED AT ELDORET THIS 11TH DAY OF APRIL 2024.

.....

R. NYAKUNDI

JUDGE

