



**Peter v Republic (Miscellaneous Criminal Application
E002 of 2023) [2024] KEHC 3765 (KLR) (18 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3765 (KLR)

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

RB NGETICH, J

APRIL 18, 2024

BETWEEN

OKYOMA MATUNDA PETER APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant together with 3 others were jointly charged with 3 counts of offences. count I was the offence of stealing contrary to section 268 as read with section 275 of the Penal Code. The particulars of the offence are that on the 28th 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. Count II was 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 28th 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. The accused together with his 3 colleagues were found guilty and convicted of the three counts and on the 23rd March, 2022 the applicant and the 3 others were 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.
4. Dissatisfied with the sentence of the trial court, the applicant and his co-convicts filed separate appeals which were consolidated. This court heard the consolidated appeal and dismissed in its entirety on



29th June, 2023. Following dismissal of the appeal, the applicant filed this undated application on 21st 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.
5. The applicant stated that the trial court imposed two sentences against him in the year 2018 being 1 year and 10 years respectively and having completed the one year sentence, he seeks to serve the remaining one year of the second sentence under probation. 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.
 6. When the matter came up for hearing on the 23rd of February 2024, the applicant informed the court that he had served sentence since 2018 and was remaining with one year to complete sentence and prayed that he be allowed to serve the remaining period under probation.
 7. The court directed that the DPP be served with the application and called for social inquiry report to be prepared by the probation officer. On 15th April 2024 when the matter came up, the applicant said he is now remaining with 10 months to complete sentence. He said at the time he was arrested, he had completed a degree course in Education and while in prison he has served as assistant teacher and has also been appointed as prison leader.
 8. In response Ms. Ratemo for the state submitted that the prison authorities say the applicant has been of good conduct while the community is still opposed to non-custodial sentence and urged this court to look at the report and make a decision.

DETERMINATION

9. 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. The law mandates the court if satisfied 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*.
10. I note from social enquiry report that the applicant admits the charge, he is remorseful and blames his action on greed for quick money as he was jobless at the time. His family stated that they knew applicant as being of good conduct but they cannot vouch for his actions away from home. Local administrator from his home area Kisii spoke well of him while local administrator from where he was arrested said they did not know the applicant much as he had not lived there for long; they were not committal concerning his character.
11. 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.”

12. In view of the above, I am of the view that the applicant has not demonstrated exceptional circumstances to warrant review of his sentence. There is no clear indication of support from his family, community nor local administration on reintegration of the applicant back to the community before completion of the sentence. In view of the above, I do not find this as appropriate case for revision of sentence.

13. Final orders: -

Application for revision of sentence is hereby dismissed.

RULING DELIVERED, DATED AND SIGNED IN VIRTUALLY AT KABARNET THIS 18TH DAY OF APRIL 2024.

RACHEL NGETICH

JUDGE

In the presence of:

CA Karanja.

Ms. Ratemo for state.

Applicant present.

