



REPUBLIC OF KENYA



KENYA LAW
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**Wakoko v Republic (Criminal Revision E003 of 2024)
[2024] KEHC 3899 (KLR) (22 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3899 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CRIMINAL REVISION E003 OF 2024
GL NZIOKA, J
APRIL 22, 2024**

BETWEEN

GODFREY MAJIWA WAKOKO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was arraigned on 6th June, 2023 before the Chief Magistrate's court charged vide Chief Magistrate's Criminal Case No. E665 of 2023 with the offence of; stealing contrary to section 268 (1) as read with section 275 of the *Penal Code* (herein "the Code").
2. The particulars of the charge are that, on diverse dates between 27th May and 2nd June 2023 at Langalanga sub-Location in Gilgil sub-County within Nakuru County the applicant with other jointly nor before the court stole thirteen (13) breeding sheep, three (3) alpine dairy goats, one (1) Honda water pump machine, two (2) blankets, and four (4) sprinkler water guns all values at Kshs. 645,300 the property of Marvine Gaye Oketch.
3. He pleaded not guilty to the charge. However, on 11th July, 2023 he changed his plea to guilty and the facts were read to him and he confirmed the same to be correct and was convicted on his own plea of guilty. The trial court ordered for a pre-sentence report which was availed and which the trial court considered.
4. Consequently, on 18th July, 2023, the trial court sentenced the applicant to serve a term of thirty-six (36) months imprisonment.
5. By an undated document described as a memorandum of sentence review, the applicant seeks for sentence review on the grounds therein reproduced here below: -
 - a. That I am a first offender.



- b. That, I pray that this honourable court allows me to spend the remaining period of my sentence under Community Service Order (C.S.O) or set me at liberty.
 - c. That, I am remorseful of my offence and I have learnt to be a law-abiding citizen.
 - d. That, I am from a poor family background.
 - e. That, I did not give proper mitigation during my sentencing and hence would like to be present during the hearing and determination of this application.
 - f. That I am the sole breadwinner of my family and my incarceration has placed them in a very difficult situation.
 - g. That, I humbly beg this court for leniency and reduce my thirty-six (36) month's sentence.
 - h. That, I am not appealing against the sentence and conviction but applying for review of sentence.
6. The application is supported by his affidavit in which he states that, he was charged with the offence of stealing contrary to section 268(1) as read with section 275 of the Code. He pleaded guilty and was convicted and sentenced to serve a term of imprisonment of thirty-six (36) months.
 7. However, the respondent filed grounds of opposition dated; 15TH April, 2024 which states that: -
 - a. That the applicant herein, was sentenced to serve a custodial sentence of 36 months.
 - b. That the maximum sentence available under the law for the offence of stealing contrary to section 268(1) as read with section 275 of the penal code is 3 years.
 - c. That the applicant has not served even one year of the sentence meted against him, since he was sentenced on 31st July, 2023.
 - d. That the appellant had a right of appeal that he opted not to utilize to his benefit and as such he cannot be allowed to bring the same through the back door by way of this revision application.
 - e. That the sentence as meted against the applicant is lawful and just in the circumstances.
 8. The court further ordered for a pre-sentence report which dated and filed on the 18th April, 2024 that indicates that the applicant has so far served nine (9) months and his expected date of release is 18th July, 2025.
 9. I take note that the applicant has not served a year of the three (3) years or a third (1/3) of his sentence.
 10. Further, the pre-sentence report dated 17th July, 2023 did not recommend a non-custodial sentence as he has a high risk of reoffending.
 11. Furthermore, the pre-sentence report dated 18th April, 2024 indicates that he still has a high risk of reoffending. Therefore, both reports are negative. The application is rejected.
 12. It is so ordered



DATED, DELIVERED AND SIGNED ON THIS 22ND DAY OF APRIL 2024

GRACE L. NZIOKA

JUDGE

In the presence of:-

The applicant present virtually

Mr. Abwajo for the respondent

Ms Ogutu: Court Assistant

