



REPUBLIC OF KENYA



**Wanjiku v Republic (Criminal Revision E226 of 2023)
[2024] KEHC 3926 (KLR) (22 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3926 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CRIMINAL REVISION E226 OF 2023
GL NZIOKA, J
APRIL 22, 2024**

BETWEEN

JOHN NJIHIA WANJIKU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was arraigned on 29th June, 2023 before the Chief Magistrate’s court charged vide Chief Magistrate’s Criminal Case No. E776 of 2023 with the offence of; stealing contrary to section 268 as read with section 275 of the *Penal Code* (herein “the Code”).
2. The particulars of the charge are that, on diverse dates of 5th and 6th June, 2023 at Maji Moto Village in Gilgil Sub-county within Nakuru County the applicant jointly with others not before the court stole eight (8) cages/traps valued at Kshs. 1,800,000 being the property of Kahehu Gaitho.
3. He pleaded not guilty to the charge. However, on 1st August, 2023 the applicant change his plea to guilty and the facts were read to him and he confirmed the same to be correct consequently he was convicted on his own plea of guilty and sentenced to serve three (3) years imprisonment.
4. 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 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.
 - b. That, I am remorseful of my offence and I have learnt to be a law-abiding citizen.
 - c. That, I am from a poor family background.



- d. 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.
 - e. That I am the sole breadwinner of my family and my incarceration has placed them in a very difficult situation.
 - f. That, I humbly beg this court for leniency and reduce my three (3) year sentence.
 - g. That, I am not appealing against the sentence and conviction but applying for review of sentence.
5. The application is supported by his affidavit in which he states that, he was charged with the offence of stealing contrary to section 268 as read with section 275 of the *Code*. He pleaded guilty and was convicted and sentenced to serve a term of imprisonment of three (3) years.
 6. However, the respondent filed grounds of opposition dated; 15th April, 2024 which states that: -
 - a. That the applicant was charged with the offence of stealing contrary to section 268 as read with section 275 of the penal code and sentenced to serve a custodial sentence of 3 years imprisonment.
 - b. That the said law under section 275 of the penal code provides for a sentence of 3 years imprisonment for the offence in question
 - c. That the sentence as meted upon the applicant is lawful and justified under the law
 - d. That the said sentence commenced on 15th August 2023, hence the applicant has not served a substantial sentence to warrant the court to be invited to review the same.
 - e. That the applicant has the right of appeal which he chose not to pursue
 7. The court further ordered for a pre-sentence report which was dated and filed on 17th April, 2024, and which the court has considered.
 8. The appellant was sentenced to serve three (3) years imprisonment, so far he has served only nine (9) months which is less than a third (1/3) of his sentence.
 9. The community views as per the pre-sentence report is that, he should serve his full sentence and they are not ready to receive him back.
 10. Therefore it is not safe to release him on a non-custodial sentence at his stage.
 11. In that case, he shall serve his sentence as follows:
 - a. A full custodial sentence of eighteen (18) months that is from 29th June, 2023. To be released on 29th December, 2024.
 - b. Upon release, he shall be placed on a probation for a period of twelve (12) months, with the Probation Officer filing reports of strict adherence to the probationary sentence on a quarterly basis. The honourable Deputy Registrar shall ensure the reports are filed.
 - c. Breach of the probationary sentence shall lead to the cancellation of the sentence and the rest served in custody.
 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

