



**Ochola v Republic (Criminal Revision E090 of 2022)
[2024] KEHC 5056 (KLR) (9 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5056 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CRIMINAL REVISION E090 OF 2022**

JK SERGON, J

MAY 9, 2024

BETWEEN

EDWARD WILLIAM OCHOLA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Edward William Ochola the Applicant herein and two others were jointly charged with four Counts. Count (I), they faced a charge of Conspiracy to Defraud contrary to section 317 of the *Penal Code* CAP 63 Laws of Kenya. The particulars in Count I are that on diverse dates between 5th March, 2009 and 24th March, 2011 at Kericho Township in Kericho District within Rift Valley Province the two jointly with others not before the court conspired with intent to defraud Ndege Chai Savings and Credit Co-operative Society by opening personal accounts pretending that they belonged to or were genuine customers at the said Ndege Chai Savings and Credit Co-operative Society and that the said accounts were then able to be operated by genuine customers.
2. The applicant together with another were charged in Count (II) with the offence of Stealing by Servant contrary to Section 281 of the *Penal Code* CAP 63 Laws of Kenya the particulars being that on diverse dates between 5th March, 2009 and 24th March, 2011 at Ndege Chai Savings and Credit Co-operative Society Limited within Kericho District within Rift Valley Province being servants to Ndege Chai Savings and Credit Society as an Accounts Assistant and a Teller respectively, jointly stole a total of Kshs. 6,054,394.06/= from the said Ndege Chai Savings and Credit Cooperative Society Limited Kericho.
3. The applicant together with another were further charged in Count (III) with the offence of Stealing contrary to section 275 of the *Penal Code* CAP 63 Laws of Kenya. The particulars of the offence are that on diverse dates between 1st December, 2010 and 22nd December April, 2010 at Ndege Chai Savings and Credit Co-operative Society Limited in Kericho District within Rift Valley Province, jointly stole



a total of Kshs. 1,278,605.94/= the property of Ndege Chai Savings and Credit Co-operative Society Limited.

4. The applicant with two others pleaded not guilty. At the hearing before the Trial Court, the prosecution called a total of seventeen (17) witnesses in support of its case. At the close of the prosecution's case, the trial court ruled that the applicant and his co-accused had a case to answer. The two opted to each give unsworn statements and called no witnesses. The trial court found that the prosecution had proven its case against all the accused persons beyond reasonable doubt in the respective counts and convicted them for the said offences. On 28th February, 2020, Hon. S.M. MOKUA, the then Learned Chief Magistrate sentenced the applicant herein to three (3) years imprisonment in Count (I), five (5) years imprisonment in Count (II) and two (2) years imprisonment in Count (III). The sentences were ordered to run concurrently with effect from 28th February, 2020.
5. The applicant together with his co-convicts each preferred an appeal to this court vide Criminal Appeal No. E019 of 2020. Lady Justice A.N Ongeri heard the appeal and dismissed it thus upholding the trial court's decision on conviction and sentence. The applicant has been in lawful custody since his sentence since then.
6. The proceedings relating to the aforesaid case, that is Kericho CMC Case No. 747 of 2011 *Republic v Edward William Ochola & Bernard Kipkirui Mutai* were placed before this Court pursuant to the application filed Court on 28th December, 2022 for sentence review.
7. The probation officer filed a sentence review report on 19th April, 2023. In the said report it was noted that the applicant while serving his custodial sentence had no records of misconduct, had not been found in possession of contraband or involved in any fights or acts that were disciplinary in nature. During his incarceration the applicant trained as a carpenter and was attached to the carpentry section, a trade skill which he was determined to explore on his release. The prison authorities in Bomet and Kericho on their part stated that the applicant had reformed and that during his incarceration the inmate was law abiding and positive towards rehabilitation, they therefore found him suitable for release and proposed that he serves the remaining term of his sentence under supervision under a community correctional sentence.
8. The probation officer noted that the applicant had applied for the instant sentence review on account of the current home circumstances. The applicant avers that has family with three young children. He also stated that his wife left their matrimonial home for an unknown place soon after the applicant was incarcerated. Their children are said to be under the care of his sickly and bedridden mother.
9. The applicant stated that he is willing to abide by the terms and conditions of a non-custodial sentence. The applicant has a fixed abode within Kericho County where he would be staying with his family.
10. The probation officer therefore found him suitable for a non-custodial sentence as it would afford him the opportunity to take responsibility for taking care of his young children who are currently suffering and in distress and to support his sickly mother. The probation officer proposed that the applicant be placed under a probation order with supervision.
11. Having considered the application before this court, the question as to whether this Court has jurisdiction to entertain the Application. I do not think this court has jurisdiction to hear and determine the sentence review Application. First, there is indication that the Applicant had on 7/9/2021 indicated before Lady Justice that he intended Appeal to the Court of Appeal. On the aforesaid date, the applicant had sought to be released on bail pending appeal. The learned Judge rejected the application and directed him to file such an Application before the Court of Appeal. The issue touching on sentence will obviously be determined by the Court of Appeal when the Appeal



comes up for hearing. The second reason why I find the Application not competently before this Court is that the issue touching on the sentence was canvassed before Lady Justice Ongeru. The Applicant and his co-appellants had specifically raised a ground challenging the sentence in part as follows:-

- (iii) The sentences meted out on the Applicants were harsh and excessive in view of the mitigating circumstances and sentencing options available in law.”

Lady Justice Ongeru considered the aforesaid ground and she inter alia dismissed the Appeal and upheld the conviction and sentences in her Judgment delivered 9th July, 2021. The Court cannot in the circumstances review the sentence which it upheld upon appeal. In any case, the issue will be a subject of appeal before the Court of Appeal. For the above reasons, I find the Application to be incompetently before this Court. This Court has no jurisdiction to entertain it.

Consequently, the instant sentence review Application is hereby ordered struck out and dismissed with no orders as to costs.

DATED, SIGNED AND DELIVERED THIS 9TH DAY OF MAY, 2024.

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J.K. SERGON

JUDGE

