



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Baraza v Republic (Criminal Revision E014 of 2024)  
[2024] KEHC 8508 (KLR) (15 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8508 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL REVISION E014 OF 2024  
DR KAVEDZA, J  
JULY 15, 2024**

**BETWEEN**

**EASTERS ONGARIA BARAZA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant was charged and after a full trial convicted for the offence of stealing by servant contrary to section 281 of the Penal Code. He was sentenced to serve four (4) years imprisonment. Being aggrieved, he filed an application seeking a revision of the sentence imposed.
2. The grounds raised in support of the application are that since his incarceration, he has undergone rehabilitation. He is remaining with one year to serve. That he has been in custody since his arrest on 1<sup>st</sup> September 2022. He urged the court to review the sentence imposed a grant a non – custodial sentence.
3. This Court’s powers to review sentences are premised on Article 165 of *the Constitution* and section 362 of the *Criminal procedure Code* which provides the supervisory jurisdiction over subordinate courts but not over superior court. Section 364 of the *Criminal Procedure Code* outlines the powers of the High Court under article 165 of *the Constitution* and section 362 of the Criminal Procedure Code and states how the powers are to be exercised.
4. The application is founded on the grounds that the applicant has since reformed. He now seeks a non-custodial sentence. In the pre-sentencing proceedings, the trial magistrate the considered the pre-sentencing report from the probation officer and the applicant’s mitigation. He then proceeded to sentence him to 4 years imprisonment.



5. The Court of Appeal, in *Bernard Kimani Gacheru vs. Republic* [2002] e-KLR stated that:

“It is now settled law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account some wrong material, or acted on a wrong principle. Even if, the Appellate Court feels that the sentence is heavy and that the Appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, anyone of the matters already states is shown to exist.”

6. In my view, the trial court considered the circumstances of the case and meted out the sentence at its discretion. The sentence of 4 years imposed was therefore proper in the circumstances.

7. The upshot of the above analysis is that the application for revision of the sentence consequently fails.

It is so ordered.

**RULING DATED AND DELIVERED VIRTUALLY THIS 15<sup>TH</sup> DAY OF JULY 2024**

---

**D. KAVEDZA**

**JUDGE**

