



**Morema v Republic (Criminal Revision E013 of 2024)  
[2024] KEHC 9517 (KLR) (25 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9517 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAMIRA  
CRIMINAL REVISION E013 OF 2024  
WA OKWANY, J  
JULY 25, 2024**

**BETWEEN**

**ERICK OBAGI MOREMA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant was charged with the offence of stealing motorcycle parts contrary to Section 278 (A) of the *Penal Code*. He was convicted for the said offence and sentenced to pay a fine of Kshs. 100,000/ = or, in default, to serve 12 months' imprisonment.
2. The Applicant filed the present Application seeking revision of the sentence. The Application is based on the following grounds: -
  1. That he was arrested, charged and convicted for the offence of stealing contrary to Section 278 (A) of the *Penal Code*.
  2. That he was approaching the Court for a revision of sentence as prescribed by the law or that the remaining term be considered for probation basis.
  3. That the Applicant was a first offender who came into conflict with the law for the first time and had learned the hard way.
  4. That this Court has inherent powers of exercising justice and remit the case back for Alternative Dispute Resolution.
  5. That the Applicant has a young family who were starving back at home since he was the breadwinner.



3. I have considered the Application and I find that the main issue for determination is whether the Application is merited.
4. Article 165 of *the Constitution* states as follows on the Court's supervisory jurisdiction: -
  - (6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.
  - (7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.
5. Article 50 of *the Constitution* states as follows: -
  - (2) Every accused person has the right to a fair trial, which includes the right—
    - (q) if convicted, to appeal to, or apply for review by, a higher court as prescribed by law.
6. Sections 362 and 364 of the Criminal Procedure Code, stipulate as follows: -

362. The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.

364.

  - (1) In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may—
    - (a) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 354, 357 and 358, and may enhance the sentence;
    - (b) in the case of any other order other than an order of acquittal, alter or reverse the order.
      - (2) No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence:

Provided that this subsection shall not apply to an order made where a subordinate court has failed to pass a sentence which it was required to pass under the written law creating the offence concerned.
7. The Applicant urged this court to grant him a non-custodial sentence. The offence for which the Applicant was convicted attracts a sentence of seven years. I find that the sentence meted by the trial court was not only legal but also lenient.
8. I have however perused the trial court's record and noted that the Applicant was convicted and sentenced on 18<sup>th</sup> December 2023. The Applicant has already served about 7 months in prison. In the circumstances of this case and taking into account the nature of the offence and the fact that the Applicant has a young family, I will exercise my discretion and set aside the 7 years' imprisonment sentence and substitute it with a non-custodial sentence. I direct that the Applicant shall be on



probation for the remaining part of his sentence under the supervision of the Probation Officer Nyamira County.

9. Orders accordingly.

**RULING DATED, SIGNED AND DELIVERED AT NYAMIRA VIA MICROSOFT TEAMS THIS 25TH DAY OF JULY 2024.**

**W. A. OKWANY**

**JUDGE**

