



REPUBLIC OF KENYA



KENYA LAW
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**Mwandoto v Republic (Criminal Revision E322 of 2022)
[2023] KEHC 446 (KLR) (16 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 446 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CRIMINAL REVISION E322 OF 2022
JN ONYIEGO, J
JANUARY 16, 2023**

BETWEEN

JONES MWAMBALA MWANDOTO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant herein was arraigned before the Voi chief magistrate's court on February 21, 2022 charged with the offence of house breaking contrary to section 304(1)(a) of the [Penal Code](#). Particulars were that on February 5, 2022 at about 0630 hrs at Bulle village Sagalla Voi sub-county within Taita Taveta county broke and entered a dwelling house of Nickson Mwambula Nina and did steal from therein.
2. He was further charged with a second count of stealing in a dwelling house contrary to section 279(b) of the [Penal Code](#). Particulars were that on February 5, 2022 at 0630 hrs at Bulle village in Sagalla in Voi Sub-County Taita Taveta county stole one sea gas 6kg cooker valued at kshs 5000 the property of Nickson mwambula Nina from the dwelling house of the said Nickson Mwambula Nina.
3. Upon taking plea, the applicant returned a plea of guilty thus attracting a conviction on his own plea of guilty and subsequently sentenced on April 20, 2022 to serve 18 months' imprisonment in respect of count one and 6 months' imprisonment in respect of count two. The sentence was to run concurrently.
4. Aggrieved by the sentence, the applicant vide a letter addressed and delivered to the resident judge Voi high court on November 8, 2022, sought revision of the sentence imposed by the trial court on grounds that; the trial court did not consider his mitigation on record; he was a first offender; he had reformed while in prison custody and that; the period spent in remand custody be taken into account in computing sentence.



5. When the matter came up for directions, the court ordered for the probation officer's report which recommended that the appellant do serve the remaining period in performing community service.
6. During the hearing, the applicant basically relied on the content contained in his letter seeking for revision with emphasis that the period spent in remand custody be taken into account. Mr sirima representing the state was not opposed to the application. I have considered the application herein and the response thereof.
7. It is trite law that this court is empowered to exercise its supervisory powers under article 165(6) and (7) of the Constitution to call for a subordinate court's record so as to make any directions or order to ensure fair administration of justice. Besides, under section 362 and 364 of the Criminal Procedure Code, the High Court is empowered to call upon and examine the record of any criminal proceedings from a subordinate court so as to satisfy itself as to the correctness, legality, propriety on sentence passed or order made and on the regularity of the proceedings.
8. I am further alive to the fact that sentencing is at the discretion of the trial court. However, an appellate court is empowered to intervene where the sentence meted out by a trial court is illegal or manifestly excessive. See *Shadrack Kipkoech Kogo v Republic* Criminal Appeal Number 25 of 2003 where the Court of Appeal held that sentencing is at the discretion of the trial court and that an appellate court can only interfere or intervene if it is shown that the trial court took into consideration irrelevant factors, applied wrong principles of the law or that the sentence was excessive and therefore an error.
9. In this case, the applicant was arraigned before the trial court on February 21, 2022. He remained in custody until April 20, 2022 when he was sentenced to serve the imprisonment term imposed. From the record, the trial court did not take into account the period served in remand custody. Pursuant to section 333(2) of the Criminal Procedure Code, the court ought to have considered the two months' period spent in remand custody.
10. Considering the fact that the applicant is remaining with a short period to complete serving sentence after taking into remission, and further considering that the probation report is favourable and that our prison institutions are congested, I am persuaded to allow the application and substitute the sentence imposed thereof with the period already served. Accordingly, the applicant is hereby set free forthwith unless otherwise lawfully held.

ROA 14 days.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 16TH DAY OF JANUARY 2023.

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J N ONYIEGO
JUDGE

