



REPUBLIC OF KENYA



**Chege v Republic (Criminal Revision E006 of 2023)
[2023] KEHC 3297 (KLR) (17 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3297 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CRIMINAL REVISION E006 OF 2023
GL NZIOKA, J
APRIL 17, 2023**

BETWEEN

PETER CHEGE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was arraigned before the Chief Magistrate’s Court at Naivasha charged vide Criminal Case. No. E789 of 2022, with the offence of stealing stock contrary to section 278 of the Penal Code. The particulars of the charge are as per the charge sheet.
2. He pleaded guilty, was convicted and sentenced to serve a term of eighteen (18) months imprisonment. By an application herein filed in court on 17th January 2023, he seeks that his sentence be reduced and/or converted into a non-custodial one.
3. The application is supported by the grounds in a document entitled “memorandum of revision” and his affidavit wherein he avers that he pleaded guilty and is a first offender. That he is remorseful and has learnt to be a law abiding citizen. That he has a young family that depends on him. Further, he is only applying for review of sentence and not conviction.
4. The Respondent opposed the application through submissions dated 6th March 2023 where it is submitted that the Hon Trial Magistrate considered the circumstances of the case and the applicant’s mitigation before sentencing him.
5. Further, the Supreme Court in Petition No. 15 of 2015 Francis Karioko Muruatetu and Another vs Republic recognized the objectives of sentencing includes deterrence which is appropriate in this case. Furthermore, the maximum sentence for the offence is fourteen (14) years and therefore the sentence is merited. They urged the court to review the sentence and mete out a harsh sentence.



6. I have considered the application in the light of the material before court and I note that, the law that guides the revisionary power of the High Court is provided for under sections 362 of the Criminal Procedure Code (herein “the Code”), which states as follows:

“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.”

7. However, the above provisions should be read together with section 364 of the Code which provision states as follow: -

“(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.

(3) Where the sentence dealt with under this section has been passed by a subordinate court, the High Court shall not inflict a greater punishment for the offence which in the opinion of the High Court the accused has committed than might have been inflicted by the court which imposed the sentence.

(4) Nothing in this section shall be deemed to authorize the High Court to convert a finding of acquittal into one of conviction.

(5) When an appeal lies from a finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed.”

8. It is therefore clear from the above provisions that, the court will only exercise its revisionary powers where, the impugned sentence is either incorrect, illegal or improper. Thus the objective of revisionary jurisdiction is to set right a patent defect or error of jurisdiction or law. This jurisdiction will only be invoked where the decision under challenge is; grossly onerous, there is no compliance with the provisions of the law, or the finding re-ordered are based on no evidence, or material evidence is ignored or judicial discretion is exercised arbitrarily or perversely.



9. To revert back to the matter herein, I note that the applicant was convicted of the offence under section 278 of the Penal Code which states that: -

“If the thing stolen is any of the following things, that is to say, a horse, mare, gelding, ass, mule, camel, ostrich, bull, cow, ox, ram, ewe, wether, goat or pig, or the young thereof the offender is liable to imprisonment for a period not exceeding fourteen years”.

10. Pursuant to the above provisions, the sentence meted out is legal and lawful. However, the Probation Department filed in the trial court a report dated; 5th October 2022 that he is 30 years old, separated from his wife and has one (1) daughter aged 3 years old.

11. Further, he dropped out of primary school in class 3 and was a Boda Boda rider prior to his arrest. That he is not remorseful and intentionally concealed information. Further his sister-in-law, who raised him, stated that he is not of good behaviour, keeps bad company and has been involved in several incidences of stealing. That, the community threatened to lynch him forcing him to be removed from Kipipiri to Naivasha.

12. Furthermore, the Area Chief stated that the applicant is of bad character and has been involved in stealing of stock in the community. That the community is opposed to a non-custodial sentence and it is not willing to accept him back or assist in his rehabilitation.

13. That the investigating officer indicated that the applicant is not a first offender. However, the complainant who was not opposed to the applicant being given a non-custodial sentence as she managed to recover her sheep. The Probation officer was of the opinion that the applicant is not reliable as he gave misleading information on the circumstances of the offence and declined to recommended a non-custodial sentence.

14. In the given circumstances I find that there is no good reason for review as he is a habitual offender and the pre-sentence report is negative. The upshot is that the application lacks merit and is dismissed accordingly. The applicant to complete the custodial sentence.

15. It is so ordered

DATED, DELIVERED AND SIGNED ON THIS 17TH DAY OF APRIL, 2023

GRACE L NZIOKA

JUDGE

In the presence of:

Appellant present in person, in court virtually

Mr Atika for the Respondent

Ms Ogutu: Court Assistant

