



**Mwambi v Republic (Miscellaneous Criminal Application
E006 of 2023) [2023] KEHC 17598 (KLR) (11 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 17598 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
MISCELLANEOUS CRIMINAL APPLICATION E006 OF 2023**

GMA DULU, J

MAY 11, 2023

BETWEEN

JOSHUA MWAKAZI MWAMBI APPLICANT

AND

REPUBLIC RESPONDENT

*(From conviction and sentence of the Criminal Case No.
433 of 2016 at by Hon. A. M. Obura (Mrs.) (CM) at Voi)*

RULING

1. In this matter, the applicant has approached this court through an application for revision of sentence in Voi CM Criminal Case No. 433 of 2016 for stealing by servant contrary to section 281 of the [Penal Code](#).
2. The applicant relies on the following grounds:-
 1. That he was sentenced to two (2) years imprisonment without fine which was extremely harsh considering that he was a first offender.
 2. That he has a young family which is depending on him and his staying in jail is affecting their life and right to education.
 3. That the learned Magistrate was harsh in sentencing him without a fine.
 4. That he humbly prays this court to grant him minimum sentence. More so non-custodial sentence.
 5. That he humbly prays this court to grant him minimum sentence for this offence more so direct the period he spent in remand custody be considered during computation of his jail term pursuant to section 333(2) of the [Criminal Procedure Code](#).



3. When the applicant appeared before me, he stated orally that he was asking for alternative sentence.
4. The learned Prosecuting Counsel Mr. Sirima on his part informed this court orally that the applicant was lucky to have been sentenced leniently for theft by servant contrary to Section 281 of the [Penal Code](#) as the statutory sentence was seven (7) years imprisonment.
5. Counsel stated that the Magistrate took into account mitigating factors in determining the sentence and the applicant should consider himself lucky for the lenient sentence.
6. Counsel stated that though the applicant had not demonstrated illegality or impropriety, his request for application of section 333(2) of the [Criminal Procedure Code](#) may be considered as he was in custody for 15 days during trial having been arrested on May 25, 2016 and released on bond on 9.6.2016 which period may be reduced.
7. Having considered the request of the applicant herein it is a request for exercise of this court's revision powers under section 362 of the [Criminal Procedure Code](#), on which I am not obliged even to give the parties involved audience. In my view this court's revision power under section 362 are not as wide or the same as the power in an appeal. They are limited to correction of obvious errors relating to correctness, illegality and impropriety of the orders of the Magistrate's court.
8. In the present case, since the trial Magistrate's record shows that she considered the mitigation, the issue of alternative sentence is a substantive issue that can only be considered by the court on appeal, not in revision proceedings.
9. In my view, the only issue that can be considered by the court herein in its revision jurisdiction is the issue of whether section 333(2) of the [Criminal Procedure Code](#) (cap.75) was complied with as there is no mention of its consideration during sentencing by the trial court. As such the trial court was in error which can be corrected by this court in revision.
10. I will thus exercise this court's revision powers under section 362 of the [Criminal Procedure Code](#) and hereby reduce the prison term imposed by the period of fifteen (15) days within which the applicant was in custody during trial. The prison sentence herein is thus reduced by fifteen (15) days.
11. The prison sentence of the applicant having been reduced by 15 days in accordance with section 333(2) of the Criminal Procedure code (cap.75), in my view the applicant can still appeal against both conviction and sentence on grounds other than section 333(2) of the [Criminal Procedure Code](#), subject to complying with the revision appeals.
12. It is so ordered.

DATED, SIGNED AND DELIVERED THIS 11TH DAY OF MAY, 2023 IN OPEN COURT AT VOI.

GEORGE DULU

JUDGE

