



REPUBLIC OF KENYA



**Mutuku v Republic (Criminal Revision E015 of 2023)
[2023] KEHC 3804 (KLR) (4 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 3804 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CRIMINAL REVISION E015 OF 2023**

GL NZIOKA, J

MAY 4, 2023

BETWEEN

KELVIN MWANZA MUTUKU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. By an application filed on 6th February 2023, the applicant seeks for review of sentence meted against him vide Chief Magistrate's Criminal case No.E053 of 2023. He was charged with various offences as stated in the charge sheet.
2. He pleaded guilty to all the six (6) counts and was sentenced to pay a fine of Kshs 5000 on each count in default to serve three months imprisonment on each. He now seeks that, the sentence be reduced or converted to a non-custodial sentence.
3. The application is supported by his own affidavit. He avers that, he is the sole winner of his family and regrets the offences he committed. That the court allow him to serve the rest of his sentence under the Community Service Order.
4. The application was served but there was no response there. I have considered the sentences provided for under the law for each offence the applicant was charged with and they are as follows

Count I Offence: Engaging in unlicensed fishing activity contrary to section 124(1)(c)(3) as read with section 186(1) of the *Fisberies Management and Development Act*.

Sentence: Section 124(3) of the *Fisberies Management and Development Act* provides for; a fine not exceeding 500,000 or a term of imprisonment not exceeding five (5) years or to both.

Count II Offence: Using prohibited fishing gear for fishing contrary to section 42(1)(e)(7) as read with section 186(1) of the *Fisberies Management and Development Act* 2016



Sentence: Section 42(7) of the *Fisberies Management and Development Act* provides for; a fine not exceeding one hundred thousand shillings (Kshs 100,000) or to imprisonment for a term not exceeding three (3) months or both.

Count III Offence: Contravening fisheries management measures contrary to section 40(1) (b) (2) of the *Fisberies Management and Development Act* 2016

Sentence: Section 40(2) of the *Fisberies Management and Development Act* 2016 provides that a person is liable to; a fine not exceeding twenty thousand shillings (Kshs 20,000) or imprisonment for a term not exceeding three (3) months or to both in respect to artisanal fishing.

Count IV Offence: Operating a vessel without a licence contrary to section 57(1) as read with section 429(1) of the *Merchant Shipping Act*.

Sentence: Section 429 of the *Merchant Shipping Act* provides that a person who commits under the Act shall be liable to; a fine not exceeding ten million shillings (Kshs 10,000,000) or to imprisonment for a term not exceeding ten years or both such fine and imprisonment.

Count V Offence: Operating a vessel without local certificate of fitness contrary to Rule 22(1) as read with Rule 34(1) of the Merchant Shipping (Small vessel safety) Regulations 2012.

Sentence: Rule 34(1) of the Merchant Shipping (Small vessels safety) Regulations 2012 provides that a person who contravenes any provisions of the regulations is liable to; a fine not exceeding one hundred thousand (Kshs 100,000) or to imprisonment not exceeding twelve (12) months or both such fine and imprisonment.

Count VI Offence: Contravening safety appliances contrary to Rule 7(1) as read with Rule 34(1) of the Merchant Shipping (Small vessel safety) Regulations 2012.

Sentence: Rule 34(1) of the Merchant Shipping (Small vessel safety) Regulations 2012 provides that a person who contravenes any provisions of the Regulations is liable to; a fine not exceeding one hundred thousand shillings (Kshs 100,000) or to imprisonment not exceeding twelve (12) months or to both such fine and imprisonment.

5. I have also considered the pre-sentence report and I find that it is favourable. The appellant is reported to have regretted his action. Further the parents are ready to help him settle down. Furthermore the Community the Local Chief and the Prison Authorities recommends a non-custodial sentence.
6. I also note that, the appellant is a young man aged 25 years. He is a first offender and pleaded guilty to the offence and saved court's time. He was sentenced on 16th January 2023, and therefore has been in custody for at least 4 months. I direct that, he serves a custodial sentence of six (6) months with effect from 16th January 2023 to 16th July 2023, and thereafter be released to serve a further six (6) months on Community Service Order, at the Mirera Chief's Office. This order be brought to the knowledge of the parties by the Hon. Deputy Registrar.
7. It is so ordered.

DATED, DELIVERED AND SIGNED THIS 4TH DAY OF MAY 2023

GRACE L. NZIOKA

JUDGE

