



**Ngetich v Republic (Miscellaneous Criminal Application
E026 of 2023) [2023] KEHC 17738 (KLR) (17 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 17738 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
MISCELLANEOUS CRIMINAL APPLICATION E026 OF 2023**

JK SERGON, J

MAY 17, 2023

BETWEEN

ISAIAH TUEI NGETICH APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Pursuant to the letter dated March 9, 2023 written by the Officer-In-Charge of Kericho Medium Prison to the Deputy Registrar of this Court, this court proceeded to call for perusal of Kericho CMCCR Case No E3461 of 2021, Republic -vs- Isaiah Tuei Ngetich under Sections 362 and 364 of the *Criminal Procedure Code*. The main purpose is to enable this court satisfy itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of the proceedings before the subordinate court.
2. Upon perusing the record, it is apparent that the Accused Person hereinafter referred to as the Applicant underwent a trial on a charge of destroying crop of cultivated produce Contrary to Section 334 (a) of the *Penal Code*.
3. The particulars of the offence were that between 14th and August 15, 2021 at Sigowet Village within Kericho County, the Applicant willfully and unlawfully destroyed cultivated produce namely:- Tea Planted on LR Kericho/Kebeneti/2988 valued at Kshs 48,490/= the property of Joseah Kibet Chumba.
4. At the conclusion of the trial, the applicant was convicted and on March 9, 2022 sentenced to serve three (3) years imprisonment.
5. The offence the Applicant was convicted for, attracts a maximum sentence of 14 years. In this case, the applicant was sentenced to serve three (3) years imprisonment.



6. I have already set out the revisionary powers bestowed upon this court. The record shows that the applicant beseeched the Trial Magistrate to be lenient to him because he was an old man aged 60 years. He also sought for forgiveness, meaning he was remorseful.
7. The Learned Senior Resident Magistrate briefly stated that she had taken into account the applicant's mitigation. It is apparent from the record that the Learned Senior Resident Magistrate did not take into account the period the applicant served in custody before he was released on bail. It is also clear that the Trial Court did not take into account the fact that the applicant was a first offender.
8. The record shows that though the applicant was released on bond/bail, he did not raise the cash bail/bond. It would appear he remained in custody throughout his trial. He has been in custody from the time he was arrested on September 20, 2021.
9. Had the Learned Senior Resident Magistrate considered the fact that the Applicant had been in custody for the entire period of his trial and that he was a first offender, she would have pronounced an appropriate sentence which would have been much lower than 3 years. In the circumstances, this Court is entitled to revise the sentence downwards in exercise of its Supervisory Powers of revision.
10. I hereby set aside the sentence of 3 years and substitute it with a sentence of 12 months. The sentence pronounced on revision to run from the date of sentence i.e from March 9, 2022. It is clear that the Applicant Namely: Isaiah Twei Ngetich has fully served the sentence.
11. He is hereby set free forthwith and should immediately be released from Prison.

DATED, SIGNED AND THIS 17TH DAY OF MAY, 2023.

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J.K. SERGON

JUDGE

In the presence of:

C/Assistant – Rutoh

.....for Applicant

