



**Omondi v Republic (Criminal Appeal E028 of 2024)
[2024] KEHC 14630 (KLR) (20 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14630 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL APPEAL E028 OF 2024
RE ABURILI, J
NOVEMBER 20, 2024**

BETWEEN

SHEILLAH AKINYI OMONDI APPELLANT

AND

REPUBLIC RESPONDENT

*(From the original conviction and sentence in Senior Principal
Magistrate's Court Criminal Case No. E189 of 2022 at Winam)*

RULING

1. The Appellant Sheillah Akinyi Omondi was convicted of the offence of stealing from a dwelling house contrary to Section 279(g) of the [Penal Code](#). She also faced the second charge of handling stolen property being money belonging to the complainant in the first charge. She denied the charge.
2. The money stolen was Kshs.700,000 out of which Kshs.142,350 was recovered, from the appellant upon arrest, the property of Celestine Adhiambo Otieno.
3. She denied committing the offences of stealing and handling stolen property but the court found her guilty of the 2nd count of handling stolen property and convicted her on 14th July 2023 and sentenced her to serve two (2) years imprisonment.
4. She has only appealed against sentence.
5. I observe that the warrant of commitment to serve prison sentence dated 14th July 2023 shows that the convict appellant herein was sentenced to serve 7 years' imprisonment while the handwritten and typed proceedings show that she was sentenced to serve 2 years imprisonment hence there is an error on the committal warrant which I hereby set aside and order that the same be corrected by the trial court to read 2 years imprisonment.



6. In her appeal against sentence only vide Memorandum of appeal dated 28th April 2024, the Appellant asserts that the sentence was manifestly excessive. She seeks that her mitigation be considered.
7. That she is a first offender hence she should be considered for a non-custodial sentence.
8. In her oral submissions, she stated that she prayed for sentence reduction. That she was pregnant and had since given birth and that it is not easy for her and her child who was now aged one (1) year and three (3) months old. She asks for pardon to enable her go to college.
9. In response, the prosecution counsel submitted that the sentence imposed was sufficient and that the Appellant had not explained how she spent the stolen money which was not recovered, and which she is not willing to refund the complainant.
10. In response, the appellant who is self-represented submitted that she wanted to go and complete her studies and that her child was not living in a conducive environment. Further, on being asked about her age, she stated that she was now 22 years old.
11. It is not in dispute that the Appellant is a young lady with a child and that she has now served over one year of the 2 years' imprisonment which was erroneously indicated as 7 years imprisonment. That error can cause one to serve an illegal sentence and this court is glad that it had the opportunity to peruse the trial court record as a whole to identify the error which would have caused an enormous injustice to the young convict with her baby, spending all the seven years in prison because of a clerical mistake.
12. In prison, the sentence runs day and night and therefore it is expected that the appellant could have served the sentence imposed, if we are to compute the said sentence with the appellant earning good time credits.
13. No presentence report was ordered on the Appellant who was a first offender and who is remorseful. There are always alternatives to prison sentences for first time offenders like the appellant herein and courts ought to be sensitive to these facts.
14. Part of the stolen money was recovered and refunded to the complainant who has the opportunity to sue for recovery of the balance. I agree that having a young child in prison is no reason for the release of the Appellant. However, prison terms should be served by those who must go to prison. That is why noncustodial sentences too are recognized in law and justice can still be served outside of prison, depending on the nature of the offence convicted of.
15. As the Appellant has served more than half of the 2 years' imprisonment imposed which was erroneously stated to be 7 years, I hereby exercise discretion and in the spirit of prison decongestion, order that the period served in prison is sufficient punishment for the Appellant.
16. Therefore, unless otherwise lawfully held, the Appellant Sheillah Akinyi Omondi is hereby set at liberty forthwith.
17. Signal to issue. This file is closed.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 20TH DAY OF NOVEMBER, 2024

R. E. ABURILI

JUDGE

