



**Ogutu v Republic (Miscellaneous Criminal Application E198 of 2024)
[2024] KEHC 13813 (KLR) (7 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 13813 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS CRIMINAL APPLICATION E198 OF 2024
MS SHARIFF, J
NOVEMBER 7, 2024**

BETWEEN

EMMANUEL OMONDI OGUTU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Emmanuel Omondi Ogutu the Applicant herein was convicted of the offence of stealing contrary to the provisions of Section 268 as read with Section 275 of the penal code, in Winam SPM Criminal Case No. E217 of 2023. He was then sentenced to serve a custodial sentence of 6 years. He has now moved this court under the provisions of Section 364 of the Criminal Procedure Code and article 50 (2) (P) of the Constitution of Kenya 2010 for review of his sentence to a lesser sentence vide a notice of motion dated 12.9.2024.
2. This application is supported by an affidavit of the Applicant of even date. I do note that the germane of this application is that he has realized his error and is now remorseful. Further that he is the only bread winner of his family and he thus craves for the exercise of mercy by this court. He also prays that the pre-trial time of 7 months be factored in the computation of his sentence.
3. It is instructive to note the applicant has not annexed any proceedings and judgment of the lower court so as to enable this court make an informed decision. In any event this court is not the trial court wherefore it has no jurisdiction to reduce the sentence. (See Muruatetu 3).
4. On the balance this application is disallowed as being devoid of merit. Any term served by the applicant prior to his conviction to be factored in during the computation of his term of sentence.
5. This file is marked as closed.

DELIVERED, SIGNED AND DATE IN KISUMU THIS 7TH DAY OF NOVEMBER, 2024.



M. S. SHARIFF
JUDGE

