



**Warima v Republic (Criminal Revision E243 of 2024)  
[2024] KEHC 14421 (KLR) (11 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14421 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
CRIMINAL REVISION E243 OF 2024  
DKN MAGARE, J  
NOVEMBER 11, 2024**

**BETWEEN**

**LAWRENCE WANJOHI WARIMA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. This is a ruling over an application dated 2/9/2024 by the Applicant seeking to review the sentence imposed as per the Judgment of Hon. D.K. Matutu (SPM) given on 28/8/2024.
2. The application instituted vide the letter dated 2/9/2024 addressed to this Court sought revision on the basis that trial court did not consider mitigation and the fact that the Applicant pleaded guilty.
3. The case of the Applicant is therefore that the sentence of 2 years imprisonment was excessive and should be substituted with a non-custodial sentence.

**Analysis**

4. The issue is whether the sentence of 2 years imprisonment should be reviewed to a noncustodial sentence in the circumstances of this case.
5. The revisionary powers permit this Court to call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court. Section 362 of the *Criminal Procedure Code* provides as follows:

The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any



finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.

6. I note that the Respondent was charged with the offence of stealing contrary to Section 268(1) as read with 275 of the *Penal Code*. The particulars of the offence were that on diverse dates between 3/6/2024 at Ichamara Shopping Centre in Mukurweini Sub-county with another not before Court stole Kshs 7,735/= the property of Quentax Co. Ltd.
7. The Applicant was apprehended, pleaded guilty and was convicted as such and sentenced to serve 2 years imprisonment.
8. This court is persuaded that the revisionary powers are paternal or supervisory in nature in order to correct or prevent a miscarriage of justice. In the High Court of Malaysia in *Public Prosecutor v Muhari bin Mohammed Jani and another* [1996] 4 LRC 728 at 734, 735 it was stated as doth:

“The powers of the High Court in revision are amply provided under section 325 of the *Criminal Procedure Code* subject only to subsections (ii) and (iii) thereof. The object of revisionary powers of the High Court is to confer upon the High Court a kind of “paternal or supervisory jurisdiction” in order to correct or prevent a miscarriage of justice. In a revision the main question to be considered is whether substantial justice has been done or will be done and whether any order made by the lower court should be interfered with in the interest of justice...If we have been entrusted with the responsibility of a wide discretion, we should be the last to attempt to fetter that discretion...This discretion, like all other judicial discretions ought, as far as practicable, to be left untrammelled and free, so as to be fairly exercised according to the exigencies of each case”

9. I have to consider whether there is abuse of discretion leading to injustice in the trial magistrate sentencing the Applicant to 2 years imprisonment. This court recognizes that sentencing is one of the most intricate aspects of trial. It complements the trial. The sentencing should be one that meets the ends of justice and ensures that the principles of proportionality, deterrence and rehabilitation are adhered to. The objectives of sentencing as set out in the 2023 *Sentencing Guidelines* are as follows: -

“ 1.

3.

- 1 Sentences are imposed to meet the following objectives. There will be instances in which the objectives may conflict with each other – insofar as possible, sentences imposed should be geared towards meeting the objectives in totality.
  - i. Retribution: To punish the offender for their criminal conduct in a just manner.
  - ii. Deterrence: To deter the offender from committing a similar or any other offence in future as well as to discourage the public from committing offences.



- iii. Rehabilitation: To enable the offender to reform from his/her criminal disposition and become a law-abiding person.
- iv. Restorative justice: To address the needs arising from the criminal conduct such as loss and damages sustained by the victim or the community and to promote a sense of responsibility through the offender's contribution towards meeting those needs. Community
- v. Protection: To protect the community by removing the offender from the community thus avoiding the further perpetuation of the offender's criminal acts.
- vi. Denunciation: To clearly communicate the community's condemnation of the criminal conduct.
- vii. Reconciliation: To mend the relationship between the offender, the victim and the community.
- viii. Reintegration: To facilitate the re-entry of the offender into the society"

10. The sentence also had to be one that was hinged on retributive justice for the secondary victims. If the court did not take into account the three (3) objectives of deterrence, retribution and denunciation of his offence at the time of sentencing him, chances of the Applicant herein being reintegrated in the society would be next to impossible as there were possibilities of being harmed.

11. The trial court apparently failed to consider that the Applicant herein pleaded guilty to the offence, had no previous criminal record, and was aged 20 years. The property stolen was also valued at Kshs 7,735/= . Having considered the facts of this case and the mitigation, this court comes to the firm conclusion that a sentence of 2 years was severe and excessive. The same is reviewed to a non-custodial sentence which I consider 6 months to be sufficient punishment.

### **Determination**

12. I therefore make the following order: -

- a. The sentence of 2 years imprisonment is reviewed and substituted with 6 months imprisonment from 4/6/2024.

**DELIVERED, DATED AND SIGNED AT NYERI ON THIS 11<sup>TH</sup> DAY OF NOVEMBER, 2024.  
RULING DELIVERED PHYSICALLY IN OPEN COURT.**



**KIZITO MAGARE**

**JUDGE**

In the presence of:-

Mr. Mwakio for the State

Applicant – present

Court Assistant – Jedidah

