



**Abdi v Republic (Miscellaneous Criminal Application E033 of 2024)
[2024] KEHC 15789 (KLR) (17 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15789 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
MISCELLANEOUS CRIMINAL APPLICATION E033 OF 2024**

**JN ONYIEGO, J
DECEMBER 17, 2024**

BETWEEN

ALI IDLE ABDI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant herein was charged with three counts of stealing contrary to Section 268(1) as read with Section 275 of the Penal Code. Particulars in respect of count one were that, on 3rd day of August 2023 at around 0750 hrs at Bulla Iskediq area in Garissa Township, Garissa Sub-County within Garissa County, he stole cash Kshs 960,000/= the property of one Ali Yusuf Hud.
2. In respect to count two, it was alleged that on 3rd day of August of 2023 at around 0750hrs at Bulla Iskediq area in Garissa Township, Garissa Sub-County within Garissa County, he stole cash Kshs 120,000/= the property of one Warsame Hamid Guhad.
3. Similarly, in respect to count three, particulars were that; on 3rd day of August of 2023 at around 0750hrs at Bulla Iskediq area in Garissa Township, Garissa Sub-County within Garissa County, he stole cash Kshs 80,000/= the property of one Ali Adan Dabley.
4. Having pleaded not guilty, the matter proceeded to trial. In the course of the trial, the appellant changed his plea thereby pleading guilty. During sentencing, the applicant offered to refund the stolen money in instalments. The court ordered him to pay the complainants the cumulative sum of kes 1.6 million in default serve 5 years imprisonment.
5. Aggrieved by the sentence, he moved to this court vide an undated notice of motion seeking review of the sentence on grounds that; he is the sole bread winner of his family; he is a first offender; he has been in custody for one year and has reformed; needs a second chance to integrate with society hence prayed for anon custodial sentence.



6. During the hearing, he reiterated the content of his application.
7. In response, Mr. Okemwa learned prosecution counsel urged the court to consider giving a non-custodial sentence arguing that the applicant was given an illegal sentence of 5 years imprisonment instead of 3 years provided by the law in respect of the offence in question.
8. I have considered the application herein and the response thereof. The applicant was charged with three counts of stealing c/s 268 (1) of the Penal Code as read with section 275 of the Penal Code. The penalty provided under section 275 is three years imprisonment.
9. It is trite that sentencing is at the discretion of the trial court and an appellate court can only interfere with the same if established that the trial court applied wrong legal principles, considered irrelevant factors or failed to take into consideration relevant factors or it is harsh or excessive. See *Ogolla s/o Owuor v Republic* (1954) EACA where the court held as follows.

“The Court does not alter a sentence unless the trial Judge has acted upon wrong principles or overlooked some material factors.”
10. In the instant case, the trial court pronounced an omnibus sentence in respect of three counts. He did not specify whether they were to run concurrently or consecutively. He should have pronounced a separate sentence for each count. In the circumstances, it is my finding that the trial court applied wrong principles in sentencing the applicant by pronouncing an incorrect omnibus sentence. Pursuant to Article 165 (6) and (7) of the Constitution of Kenya, this court has supervisory jurisdiction over subordinate courts to make any order or direction it considers appropriate for fair administration of justice.
11. In view of the above, it is my finding that the offences were committed separately hence attracting consecutive sentence. In the circumstances, I would substitute the sentence of five years imprisonment which is not specific with a sentence of one-year imprisonment for each count. Sentences to run consecutively. The applicant shall be set free of all the three counts if he compensates the complainants the stolen amount in full. The said sentences to start running from the date of sentence before the trial court.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 17TH DAY OF DECEMBER 2024

J. N. ONYIEGO

JUDGE

