



**Anuri v Republic (Miscellaneous Criminal Application E032 of 2024)
[2024] KEHC 15510 (KLR) (5 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15510 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
MISCELLANEOUS CRIMINAL APPLICATION E032 OF 2024**

**WA OKWANY, J
DECEMBER 5, 2024**

BETWEEN

EDWARD KIRAMA ANURI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant herein was convicted on his own plea of guilty and sentenced to serve 7 years imprisonment for the offence of Stock Theft contrary to Section 278 of the Penal Code.
2. He thereafter filed the Application that is the subject of this ruling wherein he seeks orders for the reduction of sentence or, in the alternative, a non-custodial sentence. The Application is supported by the Applicant's affidavit wherein he avers that he regrets his actions and has been forgiven by his family members who were the complainants in the case.
3. Article 165 of *the Constitution* stipulates as follows: -
Article 165
 - (6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.
 - (7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.
4. The duty of this Court is to consider whether the decisions that emanate from the subordinate court are correct, legal and appropriate. Sections 362 of the Criminal Procedure Code provides as follows: -
362. Power of High Court to call for records



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.

5. Section 364 of the Act further provides the manner in which this court's jurisdiction is to be exercised as follows: -

364. Powers of High Court on revision

(1) In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may—

(a) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 354, 357 and 358, and may enhance the sentence;

(b) in the case of any other order other than an order of acquittal, alter or reverse the order.

(2) No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence:

Provided that this subsection shall not apply to an order made where a subordinate court has failed to pass a sentence which it was required to pass under the written law creating the offence concerned.

6. Section 278 of the Penal Code provides for a sentence of imprisonment for a period not exceeding fourteen years for the offence of stock theft.

7. In the instant case, the Applicant stole and sold his mother's calf. The Pre-Sentence Report dated 16th November 2022 indicated that the Appellant was an alcoholic who had become a nuisance to his own relatives. He averred that his mother, who was the complainant, had forgiven him and that he was deeply remorseful for the said offence.

8. The Judiciary Sentencing *Policy Guidelines of 2016* at paragraph 23.8 indicates that remorse as mitigating factor to be considered during sentencing. This Court is also careful not to arbitrarily interfere with the trial court's exercise of discretion during sentencing. This court is alive to the fact that sentencing must meet the objectives of punishment such as deterrence, rehabilitation, denunciation and community protection among other objectives. My humble view is that, in the circumstances of this case, the 7 years imprisonment sentence, even though legal, was manifestly excessive. I note that the complainant's desire, as noted in the pre-sentence report, was that the Applicant be incarcerated only for short period to enable the family enjoy peace and calmness during his rehabilitation. It is my view that the 2 years that the Applicant has spent in prison is sufficient punishment for the offence that he committed.

9. Consequently, I find that the instant Application is merited and I therefore allow. I therefore set aside the 7 years imprisonment sentence and substitute it with a sentence for the period that he has already spent in prison since 16th November 2022. I direct that the Applicant be released from custody forthwith unless he is otherwise lawfully held.

10. It is so ordered.



**RULING DATED, SIGNED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS
5TH DAY OF DECEMBER 2024.**

W. A. OKWANY

JUDGE

