



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KITALE**

**REVISION NO. 59 (E24) OF 2021**

**DENIS OMONDI.....1<sup>ST</sup> APPLICANT**

**SAMATHAN RODGERS BOIYO.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

The Applicant **Dennis Omondi** was charged with the offence of **Preparation to Commit a Felony** contrary to **Section 308(3) ( c)** of the **Penal Code**. The Particulars of the offence were that **on 28<sup>th</sup> November 2020** at **Ronak Agrovet Stores, Kitale Township**, the Applicant, jointly with others not before court, was found in the Store of **Kishan Meisuria** by the day with intent to commit a felony therein, to wit, theft, having removed wall iron sheets. When the Applicant was arraigned before the trial Magistrate's court, he pleaded guilty to the charge. He was convicted on his own plea of guilty and sentenced to serve one (1) year imprisonment.

He has applied to this court for a revision of his sentence. He told the court that he was remorseful and had had learnt his lesson. He now realises that crime does not pay. In the period of approximately seven (7) months that he has been in prison, he had been reformed and was ready to return back to the Society. Mr Nderitu for the State was not opposed to the court exercising its discretion appropriately provided a Probation report was called for. This court duly obliged on the request and ordered such a report to be prepared. The same was prepared and handed to the court.

When the trial Magistrate sentenced the Applicant, it was exercising judicial discretion. This court can only interfere with such discretion. If it is established that the sentence meted on the Applicant was either too harsh or too lenient as to constitute an affront to the precepts of justice. In the present application, it was clear to the court that the trial Magistrate did not err when sentencing the Applicant to serve the custodial sentence. However, the Applicant has had time to reflect on his life. He has realised that what he did was both legally and morally wrong. He is remorseful and asks the court to forgive him. The Complainant, when interviewed by the Probation Officer, said that he had forgiven the Applicant. That being the case, and the fact that the Probation report is, in the whole, positive, this court shall consider positively the Applicant's request for revision of sentence.

In the premises therefore, the custodial sentence imposed on the Applicant is commuted to the period served. He is ordered set at liberty forthwith and released from prison unless otherwise lawfully held. It is so ordered.

**DATED at KITALE this 6<sup>th</sup> day of JULY, 2021.**

**L. KIMARU**

**JUDGE**