



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION CASE NO. E313 OF 2021

ALEX KENYANYA MOGENDI.....APPLICANT

VERSUS

REPUBLICRESPONDENT

RULING

1. **Alex Kenyanya**, the applicant, was charged with the offence of stealing a motorcycle contrary to **Section 278 A** of the Penal Code. Particulars of the offence being that on the 6th day of August, 2020 at Embakasi area in Embakasi Sub-County within Nairobi County stole one motor cycle registration No. **KMFE 563W** make **boxer** colour red valued at Ksh.119,000/- the property of **Alice Muhonja Simiyu**.
2. In the alternative he faced a charge of handling stolen goods contrary to **Section 322 (1) (2)** of the Penal Code. Particulars being that on the 7th day of August, 2020 at Limuru area within Kiambu County otherwise than in the course of stealing dishonestly retained one motor cycle registration No. **563W KMFE** make **boxer** colour red, knowing or having reasons to believe it to be a stolen property of Alice Muhonja Simiyu.
3. At the outset he denied the charges, and the case was set down for hearing. Thereafter, he changed his mind and pleaded guilty to the main count. He was convicted and sentenced to pay a fine of Ksh.100,000/- or serve a term of twelve months imprisonment.
4. Through an application dated 25th July 2021 he seeks to be treated as a first offender and to be granted a non-custodial sentence, or the fine be reduced accordingly.
5. The application is supported by an affidavit deposited by the applicant where he reiterates what is stated in the body of the application.
6. In an oral response, Ms. Chege learned counsel for the State urged that the applicant was arrested in August 2020 and he changed plea in June 2021 therefore, in the spirit of decongestion of prison the application could be allowed.
7. The court in determining such a matter ought to invoke supervisory jurisdiction founded on the provisions of **Section 362** of the Criminal Procedure Code that 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.
8. Facts presented by the prosecution were that the applicant borrowed a motor-cycle from the complainant but failed to return it as agreed and proceeded to switch off his phone. The complainant reported the matter to the police. He was later seen in Kiambu and subsequently arrested at Limuru.
9. The penalty provided for the offence as charged is up to seven (7) years imprisonment. In meting out the sentence the trial court exercised discretion and passed a sentence that was within the Law. The sentence meted out being legal, I have absolutely no reason to interfere with it.
10. In the result, the application is bereft of merit. Accordingly, it is dismissed.

DATED, SIGNED AND DELIVERED VIRTUALLY,

THIS 16 DAY OF NOVEMBER, 2021.

L. N. MUTENDE

JUDGE

IN THE PRESENCE OF:

Court Assistant – Mutai

Applicant

Ms. Ndombi for the State