



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION 244 OF 2019

CHARLES OCHUKA AHOLI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The Applicant was charged with two (2) counts of stealing contrary to **Section 268(1) as read with Section 275 of the penal code**. The Appellant was also charged with an alternative count of handling stolen goods contrary to **Section 322(1) (2) of the Penal Code** in each of the counts of stealing. On his own plea of guilty he was convicted of both main counts with particulars set out here below.

a. Count I: On the 27th of January, 2019, at Citam Church Woodley in Kibra sub-County within Nairobi County stole one bag containing (1) coin purse valued at Ksh. 100/- (2) KCB ATM CARD (3) ID Card and cash Ksh 13000/- and all totaling to Ksh. 13,100/- being the property of Rosalinda Murunga.

b. Count II: On the 27th of January, 2019, at Citam Church Woodley in Kibra sub-County within Nairobi County stole one bag containing (1) a mobile phone make Techno valued at Ksh. 6999/- (2) a bible valued at Ksh. 3000/- and (3) cash Ksh 2750/- and all totaling to Ksh. 14,099/- being the property of Stella Mariam Kweyu.

2. The trial court invited complainants to give their sentiments. It was the view of the complainant in count I that since there was a commitment of the family of the accused to pay the full value of the items lost the court be lenient with him. The complainant in the second count insisted that she did not want any monetary compensation. Her plea was that the stolen items be returned.

3. The Applicant gave a mitigation that he had a five (5) year old child and his wife was since deceased. After hearing both sides, the court sentenced the Applicant to pay the complainant in Count I Ksh. 13,000/- as compensation. In default, he was to serve three (3) months imprisonment. In count II, he was sentenced to serve two (2) years imprisonment. He was aggrieved with the sentence and approached this court to revise it vide application filed on 20th of September, 2019.

4. He submitted that his wife died in 2016 and that a good samaritan was taking care of his six (6) children. He prayed that the sentence be ordered to run concurrently; in the alternative a non-custodial

sentence be imposed. The Respondent represented by Miss Nyauncho submitted that she was not opposed to the application as the Applicant appeared to be remorseful.

5. **Section 362 of the Criminal Procedure Code** cautions this court to only interfere with the finding of a trial court if satisfied that there is an illegal, improper, incorrect or irregular finding or order. A charge for stealing under **Section 275 of the Penal Code** attracts a sentence of up to three (3) years imprisonment. Therefore, the sentence passed by the trial court was legal.

6. In the first count, the Applicant has demonstrated that he is unable to pay the compensation. In the second count, despite the subject matter value not being so different from the first count, he was given an option of a fine or compensation rendering the sentence harsh and excessive.

7. It was also important that the trial court indicated how the sentences were to run pursuant to **Section 14(1) of the Criminal Procedure Code**. The same provides that in the event of a conviction in several counts they run consecutively unless the court specifies otherwise. The court ought to have done the needful.

8. I have regard to the fact that the Applicant was sentenced on 13th February, 2019 and therefore has been in custody slightly in excess of one year. To date, he has not been able to pay the promised compensation in count I. Given the value of the goods stolen, I consider such custodial period as excessive. Thus, his continued incarceration serves no purpose at all.

9. I also find that the sentence in the second count was excessive given the value of the goods stolen and the fact that the Applicant pleaded guilty and thus did not waste the court's time. I set aside the two years jail term and substitute it with a fine of Ksh. 10,000/- in default serve three (3) months. I order that the sentences should run consecutively.

10. In view thereof, I find that the Applicant has served sufficient sentence and I order that he be forthwith released unless otherwise lawfully held. It is so ordered.

DATED and DELIVERED this 2nd day of March, 2020

G.W. NGENYE-MACHARIA

JUDGE

In the presence of:

1. Applicant in person.
2. Mr. Momanyi for the Respondent.